NEVADA COUNTY BOARD OF EDUCATION

Handbook

Expulsion Appeal Process

Adopted March 12, 2003

NEVADA COUNTY BOARD OF EDUCATION

Expulsion Appeal Handbook

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Expulsion Appeal Handbook

Introduction

The Nevada County Board of Education has prepared this Handbook to assist expelled pupils and the parent(s) or guardian(s) of expelled pupils in understanding the appeal process and the rights of the pupil. The Handbook constitutes the official procedures adopted by the Board for conducting expulsion appeals*. Particular attention should be paid to issues noted in "italics." These issues have been found confusing to parents filing past appeals.*

The Nevada County Board of Education is committed to an objective review and deliberation of appeals of students expelled from local school districts.

This information must be reviewed in conjunction with the laws on student discipline and expulsion appeals within the *California Education Code, Sections 48900-48926.* 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 process 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 of Education 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 of Education may consider are described more fully in this Handbook under **"SCOPE AND LIMITATIONS OF HEARING."**

- The meeting at which the County Board of Education considers the Appeal *is not a new hearing to consider evidence about whether the pupil should have been expelled. The County Board may hear new evidence only in unusual circumstances.* The purpose of the appeal meeting is to listen to argument as to whether the local school district procedures were proper.

- *The County Board of Education 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 of Education'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 expunging the record of the expulsion; or, in rare cases, (3) 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 of Education 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 Nevada County Board of Education?

The parent of the expelled pupil may file an appeal with the County Board of Education *within thirty (30) calendar days* following the decision by the school district's governing board to expel the pupil.

- "Parent" also includes guardian or legal counsel on behalf of the Parent. The pupil may also file an appeal independently of his/her Parents.

- *The thirty (30) day period normally starts on the first day after the date the school district's governing board takes action* even if notice of the decision is not mailed to the Parent immediately. *The appeal must be actually received within the thirty (30) days, not just mailed. If the deadline is on a Saturday, Sunday or County Office holiday, the appeal may be filed on the next business day.*

- Only the governing board of a school district may expel a pupil. The principal of the pupil's school or the superintendent of the school district may only recommend the expulsion to the governing board. A hearing officer or an administrative panel may conduct the expulsion hearing, develop findings of fact, and make a recommendation to the governing board. However, there is no expulsion until the school district's 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 time line 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?

Failure to appeal within the required time will result in denial of your appeal unless you can show "good cause for the late appeal." The explanation of "good cause" must be filed with the appeal. An example of "good cause" would be where the parent appeal is mailed timely, but the parent proves that document was lost by the U.S. mail.

Questions Regarding Filing an Appeal

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

Administrative Assistant to the Board of Education
Nevada County Superintendent of Schools Office
380 Crown Point Circle
Grass Valley, California 95945
Phone: (530) 478-6400 ext. 2003
Fax: (530) 478-6410

The Nevada County Superintendent of Schools office staff will answer questions and clarify the procedures outlined in this Handbook. The staff will also contact the administration of the local school district which implemented the expulsion in order to coordinate the processing of the appeal.

Submitting the Expulsion Appeal

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

Nevada County Superintendent of Schools
C/O Administrative Assistant to the Board
Nevada County Superintendent of Schools Office
380 Crown Point Circle
Grass Valley, California 95945

What Must be Included in the Expulsion Appeal?

The written notice of appeal must be filed on the *"Expulsion Appeal Request for Hearing"* form included within this Handbook.

Who is Responsible to File the Transcript and Supporting Records of the Original Expulsion Process?

A. Parent

The Parent is responsible for immediately requesting the local school district to 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 of Education, 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" form is provided at the back of this Handbook (Addendum C).**

- *The Parent shall file a copy of the request for transcript with the County Board of Education 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 or exceptional necessary expenses, or both**. A form, "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

The local school district is responsible for preparing an accurate verbatim transcript of the expulsion hearing and copies of all hearing exhibits and all correspondence regarding the suspension and expulsion. This includes documentation reflecting 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 following receipt of the Parent's written request.* The school district shall mail one copy of these documents directly to the County Board of Education with a second copy mailed to the Parent.

- [*Special Education Records*] If the expelled pupil was enrolled in special education (or was afforded the rights of a special education student 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 (*e.g.,* compliance with Education Code § 48915.5 and related federal law [34 CFR 300.520 – 300.524]).

Where the local school district cannot produce a written transcript of its hearing, the County Board of Education will reverse the decision to expel except upon good cause being shown. The Board may remand the matter in order to produce a record for written transcription. (Under Education Code 48923, the County Board of Education's authority to either:

A. remand the matter to the school district for reconsideration or grant a hearing *de novo* is limited to instances where relevant and material evidence was either unavailable at the time of the hearing or was improperly excluded from the school district hearing**, OR**
B. to adopt required findings where evidence supporting required findings exists in the record.)

Setting a Date for Hearing the Appeal

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

- The County Board will hold a hearing within twenty (20) school days following receipt of the transcript and **all** 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 County Office of Education <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 (2) 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 Board of Education at the hearing. The request will be granted only upon a 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 before the hearing.* The notice will specify the date, time, and place of the hearing. The County Board of Education holds regular meetings generally on the second Wednesday of each month at the Nevada County Superintendent of Schools office, 380 Crown Point Circle, Grass Valley. Expulsion appeals are normally scheduled to commence between 3:00 and 4:00 p.m. The County Board of Education may be required to schedule a special meeting on a different date to hear the appeal depending upon its regular business.

The hearing will be held in closed session unless the Parent has requested public session in writing filed with the County Office of Education at least five (5) calendar days prior to the hearing date.

Filing Written Arguments Prior to Hearing

The Parent or a representative may file a written argument or an appeal brief with the clerk of the County Board of Education. 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 school district also has the right to submit a written argument, or a reply brief. 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 mailing not later than the date upon which the written argument and/or district's reply argument or brief is filed.

All written arguments and appeal briefs filed with the clerk of the Board shall be retransmitted to, and received by, each Board member at least 72 hours prior to the hearing.

Scope and Limitations of the Hearing

The County Board of Education decides an appeal after:

1. reviewing the expulsion record—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's receiving an unfair hearing. It is not the charge of the County Board to agree or disagree with the school district governing board's decision to expel the pupil, but to ensure that due-process procedures were followed and that a fair hearing was conducted.

A. New Evidence

A REQUEST TO OFFER NEW EVIDENCE MUST BE NOTED WHEN FILING THE NOTICE OF APPEAL.

The County Board will hear no "evidence" other than the information that is already contained in the records submitted to be used at the appeal hearing. That information should consist only of witness testimony, written witness statements and documents which were considered at the original expulsion hearing plus official district records documenting the suspension, correspondence and the appeal documents.

- *Examples of "evidence" which may not be raised for the first time: Additional information about the facts surrounding the pupil's misconduct; the pupil's prior good behavior; or incidents occurring during the district's investigation of the misconduct if the information was known or available prior to the original expulsion hearing. The evidence should have been offered at that hearing rather than a hearing with the County Board.*

- Examples of a proper "argument" to raise at the appeal hearing in support of an issue: "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 of the hearing transcript.) 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 (1) very limited exception to the County Board not considering new evidence. If the Parent proposes to offer new evidence, the County Board will either allow an explanation of what the new evidence is and what issue it relates to [called an "offer of proof"] or will review the document in question.

The County Board will vote to allow new evidence to be offered only if a majority of the members find that the evidence qualifies as:

- Relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced at the school district expulsion hearing; or

- Relevant and material evidence which was improperly excluded at the school district expulsion hearing; and further, that

- The evidence, if received, would be a significant factor in determining the outcome of an issue in the case over which the County Board has jurisdiction to decide [Education Code § 48922].

If the County Board votes to hear new evidence, it may either:

- Remand (send) the matter to the school district governing board for reconsideration, along with such instructions for 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 (a hearing *de novo*) before the County Board of Education 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") nor to conduct a new *de novo* hearing (*e.g.*, because the student's misconduct is not the issue on appeal), the County Board members may vote to allow new "sworn evidence" or

documents limited to the issue raised. If the taking of new evidence at the same meeting would be prejudicial to the school district (*e.g.*, because a rebuttal witness is not present at the hearing), the County Board may recess the hearing to a future date to receive evidence relevant to the issue raised.

B. Legal Issues Which May Be Considered

The County Board of Education's review of the case shall be limited to the following four questions. While these questions are phrased in "legal terminology" [based upon Code of Civil Procedure §§ 1094.5(b) and (c)], there are many factual issues which 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 hearing of the individual education program (IEP) team prior to the expulsion hearing [E.C. § 48915.5(a)]?

- Was the Parent invited to attend the IEP team meeting [E.C. § 48915.5(d)] forty-eight (48) hours prior to the meeting?

- Was it determined during the IEP team meeting that the:

    1. Misconduct was not caused by a manifestation of the pupil's handicap.

    2. Pupil was appropriately placed at the time the misconduct occurred [E.C. § 48915.5(h)].

    3. Was the suspension pending the expulsion hearing for more than ten (10) days without either your agreement or order by court [E.C. § 48911(a) through (h) and 48912(a)]?

NOTE: The school district does not have jurisdiction to expel a special education student 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. [E.C. §§ 48911(g) and 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 is accustomed to rely in conduct of 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 which is not "jurisdictional," may still constitute an abuse of discretion.

For Example:

- Hearing panel member is from same school as pupil E.C. § 48918(d)];

- Failure of governing board to issue subpoena for witness in a timely manner [E.C. § 48918(i)];

- Written notice was not forwarded to the parent at least ten (10) days prior to the date of the hearing.[E.C. § 48918(b)];

- Governing board issues expulsion decision with no date set to consider readmission of the pupil [E.C.§ 48916(a)].

b. If the decision to expel is not supported by the findings prescribed by Education Code Section 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 9/12/00. John took the knife out of his backpack and showed it to two students during third period class.

- (Not enough detail) John J. violated Education Code § 48900(b) by bringing a dangerous weapon to school.

[Additional Findings] The law establishes four types of misconduct for which expulsion is "mandatory" (firearms, brandishing a knife, selling drugs, and sexual assault) [E.C. § 48915(c)]. For all other types of misconduct, the governing board must also find either of the following facts:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct;

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 [E.C. §§ 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 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 substantial evidence offered during the expulsion hearing. Such evidence may consist of documents and other writings; physical objects; testimony by a witness who observed the misconduct; circumstantial evidence; or an admission of the pupil involved, for example. Misconduct may not be proven solely by hearsay evidence, although hearsay may be admitted.

For Example:

- The finding that a pupil started a fight was not proven where the only evidence offered at hearing was testimony by the vice principal who said only that he talked to another student who said "James started the fight."

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 student 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 at Pg. 8, Paragraph A.

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, any representative, the pupil and representatives of the local school district are permitted in the room with County Board members, County Board legal counsel, and the secretary and recorder to the County Board. In public session, any member of the public may attend the hearing.

B. Hearing Procedure

The president of the Nevada County Board of Education will serve as the Hearing Facilitator and will call the hearing to order and describe the hearing procedures. Each person in the room will be asked to identify himself or herself for the record. It is anticipated that legal counsel will also be present. A tape recorder, secretary, or video recorder may be in operation throughout the hearing. All documentation will be kept for one year.

The Parent (or the Parent's representative) will be asked to indicate whether he/she noted on the expulsion appeal form B, paragraph 4, 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 pupil, the parent or guardian, or a representative of the pupil will present an opening statement and give reasons for requesting the appeal. The speaker will have a specified amount of time (normally fifteen (15) minutes) to summarize his/her position. During this time, the speaker will also respond to questions from the County Board, if any.

The representative of the school district will be given the opportunity to describe its position and the action(s) taken by the district (normally fifteen (15) minutes). During that time, the district representative will respond to questions from the County Board, if any.

You will be given additional time to present any rebuttal information to the information presented by the school district and give any closing remarks. The school district will also have additional time for closing and/or response.

Members of the County Board may ask questions to clarify the issues. The County Board may also ask questions of the staff and/or legal counsel if appropriate.

The County Superintendent or designee may, at this time, present any factual information or other consideration not already covered by others present.

It is important here to remember to remain focused upon the four (4) questions over which the County Board has authority to rule. They are:

1. *Whether the governing board acted without or in excess of its jurisdiction?*

2. *Whether there was fair hearing by the school district?*

3. *Whether there was a prejudicial abuse of discretion by the school district in completing 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 of Education or County Superintendent may ask questions of the Parent and of the school district's 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.

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.

D. County Board Deliberation

When the presentations and questioning are completed, the County Board will 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 of Education will take into consideration all of the following:

- The County Board 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 of Education consists of five (5) members, three (3) affirmative votes are required to reverse an expulsion decision by a local school district governing board irrespective of the quorum present at the appeal hearing. If the County Board enters a decision reversing the school board's decision, the County Board may direct the school board to expunge the record of the pupil and the records of the district of any references to the expulsion action and the expulsion shall be deemed not to have occurred.

Although the County Board must render a written decision within three (3) school days of the hearing, it usually renders its verbal decision on the day of the hearing. The Parent and the governing board of the school district will be notified of the rationale and decision of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered.

F. Appeal of County Board Decision

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

Addendum

Form A **Nevada County Board of Education Expulsion Appeal Policy 5510**

Form B **Expulsion Appeal and Request for a Hearing**

Form C **Request for Transcript and Supporting Documents from District**

Form D **Summary of Time Requirements in Expulsion Proceedings**

Form E **Certification of Inability to Afford Cost of Transcript**

Nevada County Board of Education Policy **BP 5510**
Board Policy 5510

STUDENTS

BP 5510 Expulsion Appeal

The County Board of Education recognizes that student discipline is primarily the prerogative of the local district. Standards of behavior acceptable to the district and procedures to assure that the standards are observed are essential to an effective school climate. The County Board of Education also recognizes, however, that the rights to due process and the rights to a fair and just resolution of behavior issues are supported through the appeal process.

Expulsion is the most severe form of discipline which a local district may invoke. The County Board of Education is vested with the responsibility of serving as the final appeal body in such cases. The hearing of expulsion appeals is intended to safeguard the rights of the student(s) and the rights of the district.

All expulsion appeals shall be conducted in accordance with Education Code, Federal Law, Federal Regulations and in accordance with administrative regulations.

The County Superintendent of Schools is charged with the development of regulations which assures that expulsion appeals are conducted in a timely and equitable manner.

Legal Reference: E. C. § 48900 et seq.

First Reading: 10-12-2003
Second Reading: 11-9-2003
Adopted: 12-10-2003
Revised:
Supersedes: Board Policy 506

NEVADA COUNTY SUPERINTENDENT OF SCHOOLS OFFICE

Expulsion Appeal and Request for Hearing

TO: Superintendent of Schools
Nevada County Superintendent of Schools Office
380 Crown Point Circle
Grass Valley, California 95945

DATE: _____

In accordance with Education Code Sections 48919 – 48924 and the Nevada County Board of Education's Board Policy 5510, an Expulsion Appeal Hearing is hereby requested.

Expelled pupil's name: _____

Age: _____ Grade: _____

Name of school attended: _____

Parent/legal guardian: _____

Home address: _____

Telephone number (Home): _____ (Work): _____ (Cell): _____

Name, Address and Phone Number of legal counsel or other designated representative of the Appellant (if any):

Name: _____

Address: _____

_____ Phone: _____

Name of expelling school district: _____

Date Respondent Board voted to expel: _____

Period of the Expulsion: _____

STATEMENT OF BASIS FOR THE APPEAL

The County Board's review of the District's decision is limited to the following issues: 1) whether the District Board acted without or in excess of its jurisdiction; 2) whether there was a fair hearing before the District Board; 3) whether there was a prejudicial abuse of discretion; 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. (See Education Code Section 48922.) Please check one or more of the following items and describe how such item(s) apply to your case.

___1. Explain how the governing board acted without or in excess of its jurisdiction in expelling the pupil. (See Education Code §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918, 48922.)

_____
_____
_____
_____

___2. Explain how the pupil was not afforded a fair hearing before the district governing board. (See Education Code §48918, §48922.)

_____
_____
_____
_____

___3. Explain how there was a prejudicial abuse of discretion by the district governing board in the hearing. (See Education Code §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918, 48922.)

_____
_____
_____
_____

___4. Explain if there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board. Evidence must be provided. (See Education Code §49818, §48922.)

_____
_____
_____
_____

(Please use another sheet of paper for additional comments, if necessary. Attach documentation, if any.)

Expulsion hearings are closed to the public unless you request a session open to the public.

I hereby certify that I requested in writing that the District Superintendent prepare a record of the expulsion hearing on _____. A copy of my request is attached.

I understand that this form **must** be filed with the Nevada County Board of Education **within 30 days** from the date the District Board voted to expel my student.

SEND COMPLETED FORM TO:
Superintendent of Schools
Nevada County Supt. of Schools Office
380 Crown Point Circle
Grass Valley, California 95945

_____
Parent/Legal Guardian Signature (or pupil, if 18 years or older)

FORM C – REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS

DATE: _____

District Superintendent's Name: _____

School District Name: _____

School District Address: _____

Re: <u>Request for Transcript and Supporting Documents from School District</u>

Dear Superintendent:

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Nevada 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 Nevada County Board of Education, provided my request is within thirty (30) days of the district school board's decision to expel. Nevada County Board of Education procedure requires that either (1) your office will send a copy of the transcript and supporting documents directly to the Nevada County Board of Education, or (2) I take responsibility for the delivery of the transcript and documents within one (1) day of completion by your office. I am requesting:

____ That you send a copy of the documents directly to the Nevada County Board of Education and a copy to me at the following address:

_____

_____

or

____ That I be 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 Nevada County Board of Education office within one (1) working day of their availability from your office.

You may contact me regarding this request at: _____
Telephone Number

Sincerely,

_____ _____

Form D – SUMMARY OF TIME REQUIREMENTS IN EXPULSION PROCEEDINGS

STEP	TIME REQUIREMENT
Determination of Conduct in Violation of E.C. 48900, 48900.2, 48900.3	Day 1
Suspension	Not more than five (5) school days - E.C. 48911
Recommendation for Expulsion/Extension of Suspension	Within the five (5) school days of suspension – E.C. 48915. Suspension may be extended pending decision on expulsion - E.C. 48911(g). Requires second conference with superintendent or superintendent's designee.
Notice of Hearing	At least ten (10) calendar days prior to hearing - E.C. 48918(b)
Pupil Request for Open Hearing	Within five (5) calendar days preceding hearing - E.C. 48818 (c)
District Extension of Hearing Date	Up to five (5) school days "for good cause" – E.C. 48918(a)
Pupil Postponement	Entitled to not more than thirty (30) calendar days – additional days at Board's discretion.
HEARING	To be conducted within thirty (30) school days of determination of pupil violation – E.C. 48918(a)
Administrative Panel or Hearing Officer Recommendation if Used	Within three (3) school days or by the thirty-third (33rd) day without postponements – E.C. 48918(e)
Decision of Governing Board	Within ten (10) school days after hearing or by the fortieth (40th) day without pupil requested hearing postponement – E.C. 48918(a)
Appeal to County Board of Education	Within thirty (30) calendar days following local Board decision – E.C. 48919
Appellate Hearing	Within twenty (20) school days following filing of formal request – E.C. 48919
Decision of the County Board of Education	Within three (3) school days of hearing, absent pupil request for postponement – E.C. 48919

Additional consideration for Special Education circumstances: timeline varies from above

CERTIFICATION OF INABILITY TO AFFORD COST OF TRANSCRIPT

_____
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)