

San Bernardino County
Superintendent of Schools

Expulsion Appeal Handbook



Transforming lives through education

SAN BERNARDINO COUNTY
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Introduction

One of the duties and responsibilities of the San Bernardino County Board of Education is to hear appeals of expulsion from school districts under its jurisdiction (California Education Code 48919).

This handbook is intended to provide you with information necessary to appeal a District expulsion decision. This handbook is not intended to be your only source of information. We encourage you to review the California Education Code (Section 48900-48924) and the school district's policies and procedures pertaining to suspension and expulsions.

When may an appeal be filed with the County Board?

Under the law, the pupil, parent, or guardian has the right to file an appeal of expulsion to the San Bernardino County Board of Education within thirty (30) calendar days after the local district's decision to expel the pupil. If thirty (30) days have passed since the date of the expulsion, the San Bernardino County Board of Education does not have jurisdiction to hear the appeal.

Day 1 of the thirty days (30) starts the day after the date of the expulsion. If the thirtieth day falls on a Saturday, Sunday, or holiday, the appeal may be filed the next business day. Filing requires receipt of a letter or form by the San Bernardino County Superintendent of Schools (SBCSS) office. Your rights may be lost if you wait until the last minute to file.

How is an appeal request made?

The pupil or the person having legal custody of the pupil may file an appeal by submitting a letter or form with the SBCSS office in person or by mail at:

County Board of Education c/o
SBCSS Director, Children Deserve Success
Roy C Hill Education Center
601 North E Street
San Bernardino, CA 92415-3093

Note: An appeal form is available at the office address above. The office of the San Bernardino County Superintendent of Schools is not responsible for appeals lost in the mail.

The letter requesting an appeal must contain the following information:

1. Name of the pupil;
2. Name and address of parent/guardian of the pupil and, if represented, the name and address of the person representing the pupil;
3. School district of residence and school most recently attended by pupil;
4. A statement of the basis for the appeal which relates to one or more of the grounds described in "Scope of Review."

What happens next?

Once the SBCSS has received a letter or form requesting an appeal of a District expulsion, a San Bernardino County Board of Education hearing date for the appeal will be set. The appeal hearing must be held within twenty (20) school days after the SBCSS office receives a request unless the pupil/parent or legal representative agree to a longer period by signing a waiver. During this period prior to the appeal hearing, the San Bernardino County Board of Education requires information/documentation provided by the pupil/parent or legal representative. The pupil/parent or legal representative will request from the local school district the transcription of the expulsion hearing and all supporting documents related to the hearing.

San Bernardino County Board of Education expulsion appeal hearings are typically scheduled for the second Monday of each month. Both the pupil/parent or legal representative and the local District will receive notices by mail ten (10) calendar days before the hearing regarding the date, time and place of the hearing.

Summary of time requirements in Expulsion Appeal Proceedings

STEP	TIME REQUIREMENTS
Appeal to the San Bernardino County Board of Education	Within thirty (30) calendar days following local School District Board Decision [Ed. Code 48919]
Hearing transcript and supporting documents (including all documents referenced in the SBCSS Expulsion Appeal Handbook section <i>“How to Prepare for the Hearing”</i>) are due to County Board of Education c/o SBCSS Director, Children Deserve Success	Within Five (5) business days prior to San Bernardino County Board of Education Hearing
Extension Request form due to County Board of Education c/o SBCSS Director, Children Deserve Success	Within five (5) business days from the mailing date of the Expulsion Confirming Letter.
Appellate Hearing Before County Board (Upon determination meeting grounds for appeal)	Within twenty (20) school days following filing of formal request [Ed Code 48919]
Decision of the San Bernardino County Board of Education	Within three (3) school days of the Expulsion Appeal Hearing, absent pupil request for postponement. [EC 48919]

Scope of review of the appeal hearing

The San Bernardino County Board of Education is required to base its appeal consideration upon the written record of the hearing conducted in the pupil's district. The County Board's review shall be limited to the following questions:

1. DID THE DISTRICT GOVERNING BOARD PROCEED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN EXPELLING THE PUPIL
2. WAS THE PUPIL AFFORDED A FAIR HEARING BEFORE THE GOVERNING BOARD OR ADMINISTRATIVE HEARING PANEL?
3. WAS THERE A PREJUDICIAL ABUSE OF DISCRETION BY DISTRICT GOVERNING BOARD?
4. WAS THERE NEW RELEVANT EVIDENCE OR EXCLUDED EVIDENCE?

What will happen at the appeal hearing?

When an appeal appears on the San Bernardino County Board for Education agenda, the Board of Education meeting will be closed (unless an open hearing has been requested) and all those not involved in the matter will be excused from the Board Room. The parent/guardian or pupil and representatives of the school district will be asked to take seats at tables in front of the Board (the pupil/parent, the district, and the County Board have the right to have legal counsel present). There will be a microphone at each table to record the hearing. The Parent/guardian and representatives will appear before the Board members, counsel, the County Superintendent, or his/her designee and members of his/her staff necessary to conduct the meeting.

1. The pupil, parent, guardian or counsel for the pupil will present the pupil's position.
2. The representative/s of the school district will present the district's position.
3. The Board members and Board counsel may ask questions at any time.
4. When the questioning has been completed, the Board President will excuse all present. The Board will deliberate in closed session on the four questions listed in "Scope of Review."
5. Following deliberations, the Board will convene in open session and take action. The Board has up to three (3) school days to make its decision.

The County Board may decide one of the following actions:

1. Affirm the local district's board decision.
2. Reverse the local district board's decision.
3. Remand the matter to the local district for reconsideration of new information, which could not have been reasonably produced during the original hearing, or was improperly excluded. The San Bernardino County Board of Education may order the pupil reinstated during this time.
4. Remand for the adoption and inclusion of the required findings when the San Bernardino County Board of Education determines that the decision of the district board is not supported by the findings required by section 48915, but evidence supporting the required findings exists in the record of the proceedings. This does not result in an additional hearing.
5. Grant a new hearing when the County Board finds that relevant and material evidence exists which, in the exercise of reasonable diligence could not have been produced or which was improperly excluded at the district hearing.

Appeal of San Bernardino County Board of Education decision

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

How to prepare for the hearing

As least five (5) days before the scheduled appeal hearing, the pupil/parent or legal representative must submit documentation to the SBCSS Director, Children Deserve Success in the following order:

1. Evidence of board action ordering the expulsion
2. Findings of fact of the Administrative Panel
3. Verbatim expulsion hearing transcript
 - a. If exhibits are referred to in the transcript, or written statements are read into the transcript, they should be attached to the transcript.
 - b. *Note: An expulsion, absent special findings, may not be based solely on written statements.*
4. Additional documents.
 - a. Submit the entire packet that was submitted to the administrative panel at the hearing or exhibits or other evidence submitted to the hearing panel.
 - b. In chronological order, all letters sent to the parents (notice of suspension, notice of meeting to continue suspension, notice of continuation of suspension pending the expulsion hearing, and the notice of expulsion hearing).

No special expertise is necessary. The members of the San Bernardino County Board of Education strive to make the participants as relaxed as possible. It is best to briefly state your position, focusing on the grounds of appeal listed in “Scope of Review

Remember that no matter how compelling an appeal is felt to be, the San Bernardino County Board of Education can only reverse a decision if it addresses one of the four areas of the appeal. The Board will focus on the previous hearing, so your case should be built on that record.

Cost pursuant to the Education Code

The pupil/parent or legal representative is responsible for requesting from the local school district and providing to the SBCSS one (1) transcribed copy of the local District expulsion hearing.

The pupil/parent or legal representative is responsible for the cost of the expulsion hearing transcript from the district, unless:

1. Pupil/parent or legal representative certifies the he/she cannot afford the cost of the transcript;
2. The San Bernardino County Board of Education reverses the decision of the local board, in which case any transcript costs advanced are to be refunded by the local board.

Additional consideration for Special Education pupils

Listed below are mandatory conditions, which must be met for Special Education pupils prior to an expulsion order.

1. Was there a pre-expulsion meeting of the individualized education team prior to the expulsion hearing?
2. Was an invitation to attend the pre-expulsion hearing extended at least 48 hours prior to the hearing?
3. Was it determined during the pre-expulsion hearing meeting that:
 - a. The misconduct was not caused by a manifestation of the pupil's handicap?
 - b. The pupil was appropriately placed at the time the misconduct occurred?

Right to have an attorney present

This handbook is an aid to help you understand the appeal hearing process. While attorneys are not required, it is the right of the San Bernardino County Board of Education, the District, and the pupil/parent or legal representative to have an attorney present.

The San Bernardino County Lawyer Referral Service at (909) 888-6791 will provide names of attorneys. You may also contact the Legal Aid Society of San Bernardino County at (909) 889-7328.

What are the parental option/responsibilities under the compulsory Education Law if the expulsion is upheld?

1. Contact the local district and ask for a copy of its procedures to review and readmit the expelled pupil;
2. A pupil expelled from school for any of the offenses listed in subdivision (a) and (c) of the Education Code Section 48915 shall not be permitted to enroll in any other school or district during the period of expulsion unless it is a county Community School or Juvenile Court School. The San Bernardino County Superintendent of Schools office operates a Community School Program for pupils in grades seven through twelve. For enrollment information, please contact the Student Services Department at (909) 386-2755;
3. Pupils in grades kindergarten through sixth should contact the local district of residence for appropriate placement;
4. If a pupil who has been expelled for an act other than described in Education Code 48915 (a) and (c) has moved to another district, the law requires that the new district be notified of the expulsion, or any pending expulsion and is required to hold a hearing to determine if the student is a threat to student and staff;
5. A pupil may apply for admission to a local charter school;
6. A pupil may apply for admission to a private or parochial school at the parent/guardian's cost.

For additional information contact:

Dr. Don English
Director, Children Deserve Success
(909)386-2755



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