

# Expulsion Appeal

## A Handbook for Parents



**Sonoma County**  
Office of Education

## Sonoma County Office of Education

Amie R. Carter, Ed.D.  
Sonoma County Superintendent of Schools

# **Sonoma County Board of Education**

Gina Cuclis  
Herman G. Hernandez  
Steven D. Herrington  
Peter Kostas  
Mary Watts

Prepared by:  
Administration Department  
(707) 524-2605

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## INTRODUCTION

If a pupil is expelled from a public school district in Sonoma County, the pupil or the parent(s) or guardian(s) of the pupil may file an appeal to the Sonoma County Board of Education. Sonoma County's public school districts include:

Alexander Valley Union School District, Bellevue Union School District, Bennett Valley Union School District, Cinnabar School District, Cloverdale Unified School District, Cotati-Rohnert Park Unified School District, Dunham School District, Forestville Union School District, Fort Ross School District, Geyserville Unified School District, Gravenstein Union School District, Guerneville School District, Harmony Union School District, Healdsburg Unified School District, Horicon School District, Kashia School District, Kenwood School District, Liberty School District, Mark West Union School District, Monte Rio Union School District, Montgomery School District, Oak Grove Union School District, Old Adobe Union School District, Petaluma City School District, Piner Olivet Union School District, Rincon Valley Union School District, Roseland School District, Santa Rosa City Elementary and High School Districts, Sebastopol Union School District, Sonoma Valley Unified School District, Twin Hills Union School District, Two Rock Union School District, Waugh School District, West Side Union School District, West Sonoma County Union High School District, Wilmar Union School District, Windsor Unified School District, Wright School District

The Sonoma County Board of Education wishes to inform expelled pupils and their parent(s) or guardian(s) about their right to appeal a decision of their school district governing board to expel and to help them understand the appeal process.

The information that follows is an explanation of the appeal process. However, it is not a substitute for important original sources such as the *California Education Code*, Sections 48900-48924, the school district's policies and administrative procedures for suspension and expulsion, and the County Board's policy and procedures for expulsion appeals. You are also entitled to review the record of the school district's expulsion hearing and supporting documents or records and to consult or engage the services of an advocate or an attorney.

## **WHEN MAY AN APPEAL OF EXPULSION BE FILED WITH THE COUNTY BOARD OF EDUCATION?**

If appealed, the expelled pupil or the parent(s) or guardian(s) are required to file a notice of appeal with the Sonoma County Board of Education within thirty (30) calendar days following the decision by the school district governing board to expel the pupil. If more than thirty (30) calendar days have passed since the date of expulsion, the County Board may no longer be able to consider your appeal.

On some occasions, a school district governing board may expel a pupil and suspend enforcement of the expulsion, allowing the pupil to return to school under certain conditions. However, the thirty (30) day time limit for filing an appeal still applies even though the pupil may be attending a district school or program.

An appeal may be filed when the pupil or the parent(s) or guardian(s) believe that one or more of the conditions described under "Scope and Limitations of Hearing" (page 7) have been violated.

**It is important to understand that an appeal before the County Board is not a new hearing;** rather, it is a review of the record of the school district's proceedings to determine if legal procedures were followed and a fair hearing was provided. It is not the charge of the County Board to agree or disagree with the school district governing board's decision to expel.

## HOW IS AN APPEAL MADE?

Filing a written notice of appeal with the County Office of Education begins the appeal process. The notice of appeal may be submitted in person or by mail to:

SONOMA COUNTY OFFICE OF EDUCATION  
ATTN: Lacey Goff  
5340 Skylane Boulevard  
Santa Rosa, CA 95403

You are encouraged to use the "Expulsion Appeal and Request for Hearing" form, which is provided with this handbook, in lieu of writing a letter. The written notice of appeal must contain all of the information below. A notice of appeal that fails to include any of this information will be returned to you. You will have five (5) days to submit the missing information. Until the information is submitted, the appeal will not be processed further.

1. Name, address, and date of birth of the expelled pupil.
2. Names, addresses, and telephone numbers of the parent(s) or guardian(s) of the pupil and of the person, if any, representing the pupil.
3. School district, school, and grade from which the pupil was expelled.
4. Date of the school district governing board's decision to expel.
5. A brief statement or set of statements which explains 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 four (4) questions described in this handbook under "Scope and Limitations of Hearing," (page 7). After reviewing the four (4) grounds for appealing an expulsion, write your specific concern(s) on the "Expulsion Appeal and Request for Hearing" form. It is not sufficient to simply recite the grounds for appeal as stated in *California Education Code* section 48922. Rather, explain as clearly as you can and provide specific details.
6. If applicable, a statement as to whether there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced before the governing board or was improperly excluded at the hearing.

## **FILING OF THE HEARING TRANSCRIPT AND SUPPORTING DOCUMENTS OR RECORDS**

On the same day that you file the notice of appeal with the County Office of Education, you must submit to the school district a written request for a copy of the written transcript of the expulsion hearing and all supporting documents or records. For your convenience, a "Request for Transcript and Supporting Documents" form is provided with this handbook.

The school district must provide you with copies of the transcript and supporting documents or records within ten (10) schooldays following receipt of your written request. Copies of these documents must be filed immediately with the County Office of Education. You may request that the school district mail copies of these documents directly to the County Office of Education, or you may arrange to pick up the documents and deliver them to the County Office of Education yourself.

You must pay the cost of the transcript and documents unless:

- You can certify to the school district that you cannot reasonably afford the cost of preparing the transcript because of limited income or exceptional necessary expenses, or both.
- The County Board reverses the decision of the school district governing board. The County Board will require the school district governing board to reimburse you for the cost of the transcript.

## **WHEN WILL THE HEARING BE HELD?**

Once the County Office of Education has received your written notice of appeal, a hearing date will be set. The County Board must hold a hearing within twenty (20) schooldays following receipt of the written notice. Both you and the school district will be sent notices by mail at least ten (10) calendar days before the hearing indicating the date, time, and place of the hearing.

The hearing may be postponed for up to thirty (30) calendar days for good cause or if you and the school district agree in writing. A request for postponement must be made in writing at least seven (7) calendar days prior to the date set for the hearing. A request for postponement received less than seven (7) days prior to the hearing or for a continuation of more than thirty (30) calendar days will be granted only upon a showing of good cause. Reasons for the extension will be included as part of the record at the hearing.

The hearing will be held in closed session unless you request that the hearing be held in an open, public meeting. You may make the request on the "Expulsion Appeal and Request for Hearing" form or in a separate written request filed with the County Office. Any request for a public session must be made in writing at least five (5) calendar days prior to the date of the hearing.

Prior to the hearing, copies of the transcript of the expulsion hearing and supporting documents or records, along with correspondence, written briefs, and other pertinent materials, will be sent to the County Board members for their review. Copies will be sent to you and the school district.

## **FILING WRITTEN ARGUMENTS**

You or your representative may file a written argument or brief with the County Board. Your written argument may not exceed ten (10) pages, excluding exhibits, and must be filed at least seven (7) calendar days prior to the date set for the hearing. You must simultaneously file a copy of your argument or brief with the school district.

The school district also has the opportunity to submit a written argument or brief. Its written argument must comply with the same length and filing timelines. The district must simultaneously serve you or your representative with a copy of its argument or brief.

## **SCOPE AND LIMITATIONS OF THE HEARING**

The County Board rules on an appeal after reviewing the expulsion record -- the transcript and supporting documents or records of the school district expulsion hearing. The County Board will hear no evidence other than that contained in the record, unless a new hearing (“de novo”) is granted as described below. Please remember the County Board does not have authority to agree or disagree with the school district governing board’s decision to expel the pupil. The County Board may only decide whether or not legal procedures were followed and if a fair hearing was conducted.

The County Board’s review will generally be limited to the following four questions:

### **1. Did the school district governing board act without or in excess of its jurisdiction in expelling the pupil?**

*Explanation:* California Education Code (See E.C. §48900 et. seq.) specifies the reasons for which a pupil may be suspended or expelled. Education Code further specifies acts for which the school district governing board shall expel [See E.C. §48915]. There are also timelines that must be followed during expulsion proceedings (See E.C. §48918) and the act(s) must be related to school activities or attendance [See E.C. §48900(s) and §48915(a)].

In a matter involving a pupil with previously identified exceptional needs who is currently enrolled in a special education program, the governing board may order the pupil expelled only if a manifestation determination meeting pursuant to 34 CFR 300.530 is conducted. The manifestation determination is used to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or if the conduct in question was the direct result of the school’s failure to implement the student’s IEP.

### **2. Was the pupil afforded a fair hearing before the governing board?**

*Explanation:* The school district is required to provide you a timely notice of the hearing; to notify you of the specific facts and charges; to allow you to be represented by legal counsel; to allow you to hear and examine all evidence submitted; and to provide you a reasonable opportunity to present evidence to deny, explain or mitigate the allegations (See E.C. §48918).

Although only the governing board may expel, it may appoint an administrative panel or hearing officer to hear the case, develop findings of fact, and make a recommendation for action to the 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.

### **3. Was there a prejudicial abuse of discretion in the hearing?**

*Explanation:* Under the law (See E.C. §48922), an abuse of discretion (although not necessarily a prejudicial abuse) would be established if:

- a) school officials did not meet procedural requirements of the Education Code; or,
- b) the decision to expel is not supported by the findings prescribed by the Education Code; or,
- c) the findings are not supported by the evidence.

The County Board may not reverse the decision of a school district governing board to expel a pupil based upon a finding of abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial to the student.

### **4. Is there now relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the school district's expulsion hearing?**

*Explanation:* Sometimes evidence is not known or available at the time of the hearing. When it is determined that this information could not reasonably have been produced and is deemed to be significant, or was improperly excluded, the County Board may:

- a) send the case back to the school district governing board for reconsideration; or
- b) conduct its own hearing "*de novo*" (new hearing).

The four (4) items listed above are the only grounds for the County Board to reverse the local district governing board's decision to expel (See E.C. §48922).

## **WHAT HAPPENS AT THE HEARING?**

The County Board conducts appeal hearings in closed session, unless you have requested an open session. The hearings are held at:

Sonoma County Office of Education  
5340 Skylane Blvd.  
Santa Rosa, CA 95403

When the appeal comes up on the agenda, the President of the County Board, or the designated chair of the hearing, will excuse everyone not involved in the matter from the Board Room. Remaining in the Board Room will be: the pupil and the parent(s) or guardian(s); the pupil's representative, if any; members of the County Board; legal counsel to the County Board; the school district's spokesperson(s); the school district's legal representative, if any; and the County Superintendent and any staff necessary to conduct the meeting. A certified court reporter will be present to make a record of the hearing.

The Board President will introduce the matter for the record, including identifying by name all of the parties who are present. The Board President will also review the scope of the County Board's role and receive as evidence the written transcript of the expulsion hearing and supporting documents or records and written arguments or briefs submitted by you and the school district.

The pupil or the parent or guardian of the pupil or the pupil's representative, if any, will be asked to make a statement. This is an opportunity for you to elaborate upon or to more fully explain the information presented in the notice of appeal you filed and in the written argument or appeal briefs you may have submitted. It is important to remain focused upon the expulsion hearing record and the County Board's scope of review. You need not be concerned about making a polished presentation, but it is important to prepare your presentation in advance. Having notes or a prepared script may be of great help.

Next, the representative(s) of the school district will be asked to make a statement reflecting the school district's position.

Each party will then be invited to make statements in rebuttal until the Board President determines that the position of each party has been fully presented. During and after each presentation, members of the County Board may ask questions of you and the school district's representative(s). When the presentations and questioning are completed, the Board President will declare the hearing closed and excuse all parties except the Board's legal counsel, the County Superintendent and any necessary staff.

The County Board will adjourn and deliberate in closed session. If, during deliberations, the County Board calls back any party associated with the appeal for further questions, all parties will be called back.

As the County Board renders its decision, keep the following in mind:

- The County Board may not substitute its judgment for the judgment of the school district governing board.
- The County Board may not consider evidence other than that contained in the record of the proceedings of the school district governing board.

The County Board may only do one of the following [See E.C. §48923]:

- Remand the matter to the school district for reconsideration of new information which could not have been reasonably produced or which was improperly excluded at the expulsion hearing. The Board may also order the student reinstated during this time.
- Conduct its own "hearing *de novo*" (new hearing) to consider new information and render its own decision. If the County Board decides to conduct a "hearing *de novo*," it must provide reasonable notice to the pupil and the school district's governing board. If it is determined that the decision of the school district governing board is not supported by the findings, but evidence supporting the findings exists in the record of proceeding required by the Education Code, the County Board will remand the matter to the school district to adopt the required findings. The district will be directed to advise you of the date and time of this action.
- Affirm the decision of the school district governing board.
- Reverse the decision of the school district governing board. If it reverses the decision, it may also direct the school district to expunge the record of any reference to the expulsion.

The County Board will render a decision within three (3) schooldays of the hearing. The pupil and the school district governing board will be notified of the final order of the County Board, in writing, either by personal service or by certified mail. The decision of the County Board is final and binding upon the pupil and upon the governing board of the school district. The order becomes final when rendered.

## PREPARING FOR THE HEARING

When taking the role of spokesperson, it is useful to prepare a statement in advance. The statement should convey the facts of the case from your perspective and should focus on the four questions listed in "Scope and Limitations of the Hearing." **Remember, no matter how compelling an appeal is believed to be, the County Board can only reverse a decision if it addresses an area within its scope of review.**

The County Board will focus on the previous hearing, so your case should be based on the record of that hearing and any evidence, which could not have been reasonably known or was unfairly excluded during the school district's expulsion hearing, if applicable. In preparing the statement, a review of the policies and procedures of the school district is advisable to determine if any procedures or timelines were not adequately met.

There may be grounds for an appeal if you can answer "no" to any of the following questions:

- Did the hearing occur within the time periods prescribed by law?
- Was the expulsion order based upon acts listed in the Education Code or a local board rule?
- Was the act related to a school activity or attendance?
- Was adequate and timely notice of the hearing given to the pupil?
- Was the pupil notified of the specific facts and charges upon which the expulsion was based and given a copy of the discipline rules related to the violation?
- Was the pupil afforded the right to be represented by legal counsel?
- Was the hearing held in closed session (unless an open session was requested)?
- Was the pupil allowed to present evidence and introduce testimony of witnesses on his/her behalf?
- Was the pupil given the opportunity to hear and/or examine all evidence submitted against him/her and deny, explain, or mitigate the allegations against him/her?
- Was the pupil given an opportunity to confront and question any witnesses who testified at the hearing, except as provided in E.C. §48918(h)?
- Did school officials meet the procedural requirements of the Education Code?
- Was the district's decision to expel the pupil supported by findings prescribed by E.C. §48918?
- Were the findings supported by the evidence?
- Was all relevant and material evidence included at the hearing before the school district governing board?
- If the suspension pending the expulsion hearing extended beyond ten (10) days, was parent agreement or a court order obtained [34 CFR 300.530(f)(2)]? (Note: the pupil may be moved to an appropriate interim alternative placement up to 45 days without parent agreement or a court order if the pupil carries a weapon, knowingly is in possession of a controlled substance, or causes serious bodily injury [34 CFR 300.530(g)]).

## **RIGHT TO HAVE AN ATTORNEY OR ADVOCATE**

It is the intention of the County Board of Education to conduct hearings in a manner which does not require attorneys. However, an advocate or legal counsel may be helpful. While attorneys are not required, all parties and the County Board of Education have the right to have an attorney present.

## **RESPONSIBILITIES AND OPTIONS FOR EDUCATIONAL PLACEMENT IF EXPULSION IS UPHELD**

If you intend to remain a resident in the school district from which your child was expelled, obtain a copy of its procedures for review and readmission of expelled pupils.

The school district must ensure the pupil is provided with an educational program during the period of the expulsion. The school district will refer the pupil to an appropriate placement as determined by the seriousness of the offense, available alternatives, and other related factors. The placement may be one that is operated by the school district or the County Office of Education.

A pupil expelled for any of the offenses listed in subdivision (a) or (c) of E.C. §48915 is not permitted to enroll in any other school or district during the period of expulsion unless it is a county community school, a juvenile court school, or a community day school. The County Office of Education operates Community School programs for pupils in grades seven through twelve. For enrollment information, contact the Office of Alternative Education at (707) 524-2876.

Other options may include:

- If the pupil has been expelled for an act other than described in E.C. §48915(a) or (c) you may seek enrollment of the pupil in another school district. You must inform the proposed new school of the expulsion or any pending expulsion.
- You may apply for admission of the pupil in a private school.
- You may employ a tutor. The tutor must possess a valid California teaching credential.
- You may seek enrollment of the pupil in a Community School operated by the County Office of Education.

If you move into a different school district or if the pupil moves into another school district, you or the person who has assumed responsibility for the pupil must notify the new school district of the expulsion or any pending expulsion. The district must hold a hearing to determine if the pupil is a threat to students and staff.

It is important to remember that when a child 6 to 18 years of age is expelled from a school district, the parent or guardian is still responsible to ensure that the child attends school.

## APPENDIX A

### EXPELLABLE ACTIONS

Pupils may be suspended or expelled for any of the following acts related to school attendance or a school activity:

- Causing, attempting to cause, or threatening to cause physical injury to another person [E.C. §48900(a)(1)].
- Willfully using force or violence upon the person of another, except in self-defense [E.C. §48900(a)(2)].
- Possessing, selling or otherwise furnishing any firearm, knife, explosive, or other dangerous object, unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal [E.C. §48900(b)].
- Unlawfully possessing, using, selling, or otherwise furnishing, or being under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the *Health and Safety Code*, an alcoholic beverage, or an intoxicant of any kind [E.C. §48900(c)].
- Unlawfully offering, arranging, or negotiating to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the *Health and Safety Code*, an alcoholic beverage, or an intoxicant of any kind, and then either selling, delivering, or otherwise furnishing to any person another liquid, substance, or material and representing the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant [E.C. §48900(d)].
- Committing or attempting to commit robbery or extortion [E.C. §48900(e)].
- Causing or attempting to cause damage to school property or private property [E.C. §48900(f)].
- Stealing or attempting to steal school property or private property [E.C. 48900(g)].
- Possessing or using tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products [E.C. §48900(h)].
- Committing an obscene act or engaging in habitual profanity or vulgarity [E.C. §48900(i)].
- Unlawfully possessing or unlawfully offering, arranging, or negotiating to sell any drug paraphernalia, as defined in Section 11014.5 of the *Health and Safety Code* [E.C. §48900(j)].

- Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties [E.C. §48900(k)].
- Knowingly receiving stolen school property or private property [E.C. §48900(l)].
- Possessing an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm [E.C. §48900(m)].
- Committing or attempting to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the *Penal Code* or committing a sexual battery as defined in Section 243.4 of the *Penal Code* [E.C. §48900(n)].
- Harassing, threatening, or intimidating a pupil who is a complaining witness or witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both [E.C. §48900(o)].
- Unlawfully offering, arranging to sell, negotiating to sell, or selling the prescription drug Soma [E.C. §48900 (p)].
- Engaging in, or attempting to engage in, hazing. “Hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. “Hazing” does not include athletic events or school-sanctioned events.[E.C. §48900 (q)].
- Engaging in an act of bullying, as defined in E.C. §48900 (r)(1) –(3) [E.C. §48900(r)].
- Committing sexual harassment as defined in subdivision (b) of Section 212.5 of the *Penal Code* (grades 4-12 only) [E.C. §48900.2].
- Causing, attempting to cause, threatening to cause, or participating in, an act of hate violence as defined in subdivision (e) of Section 233 (grades 4-12 only)[E.C. §48900.3].
- Engaging in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of either school personnel or pupils by creating an intimidating or hostile educational environment (grades 4-12 only) [E.C. §48900.4].
- Making terrorist threats against school officials or school property, or both [E.C. §48900.7].

Pupils shall be recommended for expulsion for any of the following acts committed at school or at an activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance [E.C. §48915 (a)]:

- Causing serious physical injury to another person, except in self-defense.
- Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.
- Unlawful possession of any controlled substance listed in *Health and Safety Code* Section 11053 et. seq., except for the first offense possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis or the possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician.
- Robbery or extortion.
- Assault or battery, as defined in Sections 240 and 242 of the *Penal Code*, upon any school employee.

Pupils shall immediately be suspended and be recommended for expulsion for any of the following acts at school or at a school activity off school grounds [E.C. §48915 (c)]:

- Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.
- Brandishing a knife at another person.
- Unlawfully selling a controlled substance listed in *Health and Safety Code* Section 11053 et. seq.
- Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.
- Possessing an explosive.

## **County Board Policy 5144.3: Student Expulsion Appeals**

**Status:**  
ADOPTED

**Original Adopted Date:** 02/02/2022 | **Last Revised Date:** 01/12/2023 | **Last Reviewed Date:** 1/12/2023

The Board has the authority to hear appeals of student expulsion requested by the pupil or parent/guardian. The Board shall hear all appeals regarding the expulsion of a pupil in closed session, unless the pupil requests otherwise, as set forth in section IV.D.1 herein. (Education Code 48920)

### **Student Expulsion Appeals**

#### **I. Definitions**

- A. "Day" means a calendar day unless otherwise specifically provided.
- B. "Expulsion" means removal of a pupil from (1) the immediate supervision and control, or (2) the general supervision, of school personnel, as those terms are used in section 46300.
- C. "School day" means a day upon which the schools of a school district are in session or weekdays during the summer recess.
- D. "Pupil" includes a pupil's parent or guardian or legal counsel.

#### **II. Procedures for Filing Appeal**

- A. If a pupil is expelled by the governing board of a Sonoma County school district (hereinafter "governing board"), the pupil or the pupil's parent or guardian (hereinafter "the pupil") may file an appeal to the Sonoma County Board of Education (hereinafter "county board") which shall hold a hearing thereon and render its decision.
- B. The appeal must be filed and actually received by the county board within 30 days following the decision of the governing board to expel. The period within which an appeal is to be filed shall be determined from the date the governing board votes to expel even if enforcement of the expulsion action is suspended and the pupil is placed on probation pursuant to Education Code 48917. Education Code 48917(f) provides as follows: "A decision of the governing board to suspend an expulsion order does not affect the time period and requirements for the filing of an appeal of the expulsion order with the county board of education required under section 48919. Any appeal shall be filed within 30 days of the original vote of the governing board." Thus, a pupil who fails to appeal the original action of the governing board within the prescribed time may not subsequently appeal a decision of the governing board to revoke probation and impose the original order of expulsion.

C. To file an appeal of an expulsion the pupil shall submit to the county board a written request for an appeal hearing. The written request shall include the following:

1. Name of the expelled pupil.
2. Name of the expelling school district.
3. Date of expulsion decision by the governing board.
4. Name, mailing address, and telephone number of the pupil.
5. Certification that the pupil has requested the school district to prepare a record of the expulsion hearing.
6. A statement as to whether the pupil claims that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced before the governing board or was improperly excluded at the hearing, giving the basis for such claim.
7. A statement as to whether the pupil claims the governing board has proceeded without or in excess of its jurisdiction as defined in Education Code 48922(b), giving the basis for such claim.
8. A statement as to whether the pupil claims that there was not a fair hearing before the governing board, giving the basis for such claim.
9. A statement as to whether the pupil claims that there was a prejudicial abuse of discretion as defined in Education Code 48922(c) at the governing board hearing, giving the basis for such claim.

D. In the event the County Board's designee determines that the pupil failed to include any information required in section II. C the request for an appeal hearing shall be returned to the pupil along with a reference to the missing information and the following notation: "NOTICE: The request for an appeal hearing is deficient in that it fails to include the following information: \_\_\_\_\_. You have five (5) calendar days to submit the missing information. All applicable timelines shall cease until the above information is submitted or 5 calendar days have passed, whichever comes first."

### III. Expulsion Hearing Record

A. The pupil shall submit a written request for a copy of the written transcript and supporting documents of the expulsion hearing from the school district simultaneously with the filing of the request for appeal with the county board. The school district shall provide the pupil with the transcriptions, supporting documents, and records within ten (10) schooldays following the pupil's written request. The secretary of the governing board or the secretary's designee shall certify the record. Upon receipt of the records, the pupil shall immediately thereafter file suitable copies of these certified records with the county board.

B. The cost of the transcript shall be borne by the pupil except in either of the following situations:

1. Where the pupil's parent or guardian certifies to the school district that he or she cannot reasonably afford the cost of the transcript because of limited income or exceptional necessary expenses, or both.

2. In a case in which the county board reverses the decision of the governing board, the county board shall require that the governing board reimburse the pupil for the cost of such transcription.

#### IV. Appeal Hearing

##### A. Time for Holding Appeal Hearing

The county board shall hold the hearing within twenty (20) schooldays following the filing of a written request for appeal.

For good cause or on mutual written agreement either party may be granted one (1) postponement of the appeal hearing date for a period not to exceed thirty (30) calendar days providing the request is made, in writing, at least seven (7) calendar days before the date set for the hearing. A request for postponement less than seven (7) days prior to the date set for the hearing or a continuation beyond 30 calendar days shall be granted by the county board or county board's designee only upon a showing of good cause. Reasons for the extension of time for the hearing shall be included as part of the record at the time the appeal hearing is conducted.

##### B. Written Notice of the Appeal Hearing

Written notice of the appeal hearing shall be forwarded to the pupil and the governing board at least ten (10) calendar days prior to the date of the hearing by personal service or by registered mail, return receipt requested. This notice shall include:

1. The date, time and place of the hearing.
2. If not previously provided, a copy of the county board rules and regulations governing expulsion appeals.
3. The opportunity of the pupil or the pupil's parent/guardian and the school district to:
  - a. Appear in person and to be represented by an attorney or other representative.
  - b. Present oral and written argument for or against the expulsion order of the school district governing board.
4. Notification that the hearing will be in closed session unless at least five (5) days before the hearing date the pupil requests, in writing, that the hearing be conducted in public.

##### C. Hearing Briefs

Either party may submit a hearing brief not to exceed 10 pages, not counting any exhibits, provided a copy is both served on the other party and filed with the County Board at least seven (7) calendar days prior to the date of the hearing.

##### D. Conduct of the Appeal Hearing

1. Closed Session: Notwithstanding the provisions of section 54950 of the Government Code and section 35145 of the Education Code, the county board shall hear an appeal of an expulsion order in closed session, unless the

pupil requests, in writing, at least five (5) days prior to the date of the hearing, that the hearing be conducted in a public meeting. Upon the timely submission of a request for a public meeting, the county board shall be required to honor the request. Whether the hearing is conducted in closed or public session, the county board may meet in closed session for the purpose of deliberations. If the county board admits any representative of the pupil or of the school district, the county board shall, at the same time admit representatives from the opposing party.

2. Determination Upon the Record: The county board shall determine the appeal from a pupil expulsion upon the record of the hearing before the governing board, together with such applicable documentation or regulations as may be ordered. No evidence other than that contained in the record of the expulsion proceedings of the governing board may be heard unless a de novo proceeding is granted as provided in section IV.E.2.a herein.

3. Failure of Parties to Appear: Absent a demonstrated emergency that prevented one or both parties from attending the hearing or stipulation between the pupil and the school district that the county board may review the record without argument, the county board reserves the right to either consider the matter on the basis of record before it or dismiss the appeal based upon failure of the pupil or the pupil's representative to appear at the hearing.

#### 4. Scope of Review

a. The review by the county board of the decision of the governing board shall be limited to the following questions:

- 1) Whether the governing board acted without or in excess of its jurisdiction.
- 2) Whether there was a fair hearing before the governing board.
- 3) Whether there was a prejudicial abuse of discretion 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.

b. As used in section IV.D.4.a.1, herein, a proceeding without or in excess of jurisdiction includes, but is not limited to, a situation where an expulsion hearing is not commenced within the time periods prescribed by Article 1, Chapter 6, Part 27 of the Education Code, a situation where an expulsion order is not based upon the acts enumerated in sections 48900, 48900.2, 48900.3, 48900.4 and 48900.7 of the Education Code, or a situation involving acts not related to school activity or attendance.

c. For purposes of section IV.D.4.a.3) herein, an abuse of discretion is established in any of the following situations:

- 1) If school officials have not met the procedural requirements of Article 1, Chapter 6, Part 27 of the Education Code.
- 2) If the decision to expel a pupil is not supported by the findings prescribed by section 48915 of the Education Code.
- 3) If the findings are not supported by the evidence.

The county board may not reverse the decision of the governing board to expel a pupil based upon a finding of an abuse of discretion unless the county board also determines that the abuse of discretion was prejudicial.

4) Record of Appeal Hearing. A record of the appeal hearing shall be made. Such record may be maintained by any means, including electronic recording, so long as a reasonably accurate written and complete transcription of the proceedings can be made.

5) Presentation of Evidence

a) The record of the hearing before the governing board, the pupil's request for county board review of expulsion and a copy of this policy shall be received.

b) The pupil may address the county board regarding the manner in which the record supports the pupil's position.

c) The governing board may address the county board regarding the manner in which the record supports the governing board's position.

d) The pupil, then the governing board, may address the county board with statements in rebuttal until the county board determines that the position of each of the parties have been fully presented.

5. Continuance of the Hearing:

Upon the opening of the hearing, the County Board may on its own motion or by determination of the County Board President, continue the hearing to another date(s) so as to allow the Board additional opportunity to review the submitted record. If the hearing is continued by action of the County Board President, it shall be done in accordance with Government Code section 54955 authorizing adjournment of a meeting to a specified date and time. In the event there is cause for subsequent continuances in the hearing, these same provisions shall apply.

E. Decision

1. Time for Rendering Decision - The county shall render a decision within three (3) school days of the closure of the appeal hearing unless the pupil requests a postponement.

2. Limits of the Decision - The decision of the county board of education shall be limited as follows:

a. Where 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 hearing before the governing board, it may do either of the following:

1) Remand the matter to the governing board for reconsideration and may in addition order the pupil reinstated pending such reconsideration; or

2) Grant a hearing de novo upon reasonable notice thereof to the pupil and to the school district governing board. This hearing shall be conducted in conformance with the rules and regulations adopted by the county board under section IV.E herein.

b. If the county board determines that the decision of the governing board is not supported by the findings

required to be made by section 48915, but evidence supporting the required findings exists in the record of the proceedings, the county board shall remand the matter to the governing board for adoption of the required findings. The remand shall be with direction to the governing board to advise the parent/guardian of any further district action on the matter and the time and date thereof. This remand for the adoption and inclusion of the required findings shall not result in an additional hearing pursuant to section 48918, except that final action to expel the pupil based on the revised findings of fact shall meet all requirements of subdivisions (j) and (k) of section 48918.

c. In all other cases, the county board shall enter an order either affirming or reversing the decision of the governing board. In any case in which the county board enters a decision reversing the governing board, the county board may direct the governing board to expunge the record of the pupil and the records of the school district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

#### Finality of the County Board Decision

The administrative decision of the county board shall be final and binding upon the pupil and upon the governing board of the school district. The pupil and the governing board shall be notified of the final order of the county board in writing, either by personal service or by registered mail, return receipt requested. The order shall become final when rendered. In such notification the parties shall be advised that should either party desire to seek a judicial review of the county board's administrative decision that such judicial review must be requested within ninety (90) days of the date of the Board's order.

#### V. Procedures for Hearing De Novo

If the county board decides to grant a de novo hearing pursuant to Education Code 48923(a)(2) such hearing shall be conducted pursuant to the following procedures:

##### A. Expulsion: Definitions

Expulsion means removal of a pupil from the immediate supervision and control, or the general supervision, of school personnel, as those terms are used in Education Code 46300. The county board may expel a pupil for any or all of the acts and conditions enumerated in section 48900 of the Education Code.

##### B. Pupils with Exceptional Needs

The county board may expel a pupil with exceptional needs (as defined in Education Code 56026) who is currently under an Individualized Education Program (IEP) or a pupil not yet identified but who is entitled under 34 CFR300.527 to assert the rights of a pupil with exceptional needs, but only if the county board concurs with the determination by an individualized education program team that:

1. The pupil's IEP and placement were appropriate;
2. The special education services, supplementary aides and services and behavior intervention plan were provided in accordance with the pupil's IEP and placement;
3. The pupil's disability did not impair the ability of the pupil to understand the impact and consequences of the behavior subject to disciplinary action; and,
4. The pupil's disability did not impair the ability of the pupil to control the behavior subject to the disciplinary action.

### C. Hearing by County Board: Time Limit

1. An expulsion hearing shall be held within twenty (20) school days of the decision to grant a de novo hearing.
2. The pupil may request, in writing, a postponement of the hearing not to exceed thirty (30) calendar days of the date set for the de novo hearing. Such request shall be made at least five (5) days prior to the date of the de novo hearing. A request for postponement after the fifth day before the date set for the de novo hearing shall be granted by the county board or the county board's designee only upon a showing of good cause.
3. The county board or the county board's designee may, for good cause, extend the time period for the expulsion hearing for an additional five (5) school days, in the event that compliance by the county board with the time requirements is impracticable. Reasons for the extension of the time for the hearing shall be included as part of the record at the time the expulsion hearing is conducted. Once the hearing begins, it shall be conducted with reasonable diligence and concluded without unnecessary delay.

### D. Written Notice of the Hearing

Written notice of the hearing shall be forwarded to the pupil and the pupil's parent/guardian at least ten (10) calendar days prior to the date of the hearing. Such notice shall include:

1. The date, time and place of hearing.
2. A statement of the specific facts and charges upon which the proposed expulsion is based.
3. A copy of disciplinary rules of the school district which relate to the alleged violation.
4. The opportunity of the pupil or the pupil's parent/guardian to:
  - a. Appear in person and to employ and be represented by legal counsel or a non-attorney advisor.
  - b. Inspect and obtain copies of all documents to be used at the hearing.
  - c. Call, confront, and question all witnesses who testify at the hearing.
  - d. Question all evidence presented, and
  - e. Present oral and documentary evidence on the pupil's behalf, including witnesses.

### E. Conduct of Hearing

1. Closed Session: The county board shall conduct a hearing to consider the expulsion of the pupil in a session closed to the public, unless the pupil requests in writing at least 5 days prior to the hearing, that the hearing be conducted at a public meeting. If such request is made of the county board, the meeting shall be public. Whether the expulsion hearing is held in closed or public session, the board may meet in closed session to deliberate and determine if the pupil should be expelled. The parent/guardian of the pupil, the pupil, and the counsel of the pupil,

shall be allowed to attend the closed session if the county board admits any other person to the closed session.

2. Record of Hearing: A record of the hearing shall be made. Such record may be maintained by any means, including electronic recording so long as a reasonably accurate written and complete transcription of the proceedings can be made.

3. Failure to Make Objections: If either party fails to object at the hearing that these rules are not being properly followed, or that any other law or requirement of due process is not being followed, the objections shall be deemed waived.

4. Presentation of Evidence: While no evidence shall be based solely on hearsay evidence, upon a finding that good cause exists, the county board may determine that the identity of a witness and the testimony of the witness may subject the witness to an unreasonable risk of harm. Upon this determination, the testimony of the witness may be presented at the hearings in the form of sworn declarations, which shall be examined only by the county board. Copies of these sworn declarations, which are edited to delete the name and identity of the witness, shall be made available to the pupil. The county board and the pupil may stipulate to (agree upon) any or all findings of fact. The county board may only consider facts presented to them at the time of the hearing.

5. Technical Rules of Evidence do not Apply: Technical rules of evidence shall not apply to the hearing. Relevant evidence may be admitted and used as proof only if it is the kind of evidence which reasonable persons are accustomed to rely on in the conduct of serious affairs. The decision of the county board to expel shall be based upon the substantial evidence showing that the pupil committed any of the above acts enumerated in section 48900 of the Education Code.

6. Witnesses Shall Testify Under Oath: The president or presiding officer shall swear the witnesses. The form of oath should be as follows:

"Do you solemnly swear (or affirm as the case may be), that the evidence you shall give in this matter pending before the Sonoma County Board of Education, shall be the truth, the whole truth, and nothing but the truth?"

7. The county board may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated, pursuant to Government Code section 54957.

8. The pupil or his parent or guardian shall have the opportunity to:

- a. Appear in person or to employ and be represented by legal counsel or non-attorney advisor;
- b. Inspect and obtain copies of all documents to be used at the hearing;
- c. Question all evidence presented;
- d. Present oral and documentary evidence on the pupil's behalf, including witnesses;
- e. Confront and question all witnesses who testify at the hearing.

9. Final Action by County Board: Whether the pupil expulsion hearing is conducted in closed or public session by the county board, the final action to expel shall be taken by the county board at a public session.

10. Decision Within 10 Days: The decision of the county board whether to expel a pupil shall be made within ten (10) school days following the conclusion of the hearing, unless the pupil requests in writing that the decision be postponed. The decision when rendered shall be final and binding upon the pupil and upon the governing board.

11. Written Notice to Expel: Written notice of the decision to expel or to suspend the enforcement of an expulsion order shall be sent to the pupil or pupil's parent/guardian by personal service or by registered mail, return receipt requested.

The pupil and pupil's parent/guardian shall also be notified of the procedure for filing and processing a request for readmission with the governing board.

Sending written notice to the pupil or pupil's parent/guardian of the decision of the county board to expel shall be the responsibility of the county board or the county board's designee.

12. Decision Not to Expel: Following the county board's decision after the hearing not to expel, the pupil shall be reinstated immediately to a classroom, instructional program, rehabilitation program or any combination of such programs by the school district after consultation with district personnel including the pupil's teacher(s) and the parent/guardian of the pupil.

### 13. Expulsion: Readmission

a. An expulsion order shall remain in effect until the governing board may order the readmission of the pupil. At the time the county board orders expulsion of a pupil, the county board shall require the governing board to set a date no later than the last day of the semester following the semester in which the expulsion occurred, when the pupil may apply for readmission to a school within the district. The county board may recommend a plan for rehabilitation for the pupil, which may include, but is not limited to:

1) Periodic review and assessment at the time of application for readmission

2) Recommendations for counseling, employment, community service, and rehabilitation programs

b. Any written request for review of expulsion action and request for readmission shall be submitted by the parent/guardian to the governing board in accordance with the procedures set forth in the school district's readmission policy.

### 14. Expulsion: Suspension of Expulsion

a. The county board, upon voting to expel a pupil, may suspend the enforcement of the expulsion order for not more than one calendar year.

b. Conditions of Suspension of Expulsion Order:

1) As a condition of the suspension of the expulsion order, the county board may assign the pupil to a school, class or program, which it deems appropriate for the pupil's rehabilitation.

2) During this period of suspension of the expulsion order, the pupil shall be on probationary status.

3) The suspension of the expulsion order may be revoked by the county board upon the pupil's commission of any of the acts enumerated in Education Code 48900 et seq., or for any violation of the rules and regulations governing pupil conduct of the education program where the pupil is in attendance.

c. Revocation of Expulsion Order: Upon revocation of the suspension of an expulsion order, a pupil may be expelled under the terms of the original expulsion order.

d. Readmission of Pupil: Upon satisfactory completion of the rehabilitation assignment of a pupil, the county board, with consultation with school district personnel, shall reinstate the pupil in the school district and may order the expungement of any or all records of the de novo hearing proceedings.