



For Additional Information contact:

Don English

Director, Children Deserve Success

(909) 386-2755



EXPULSION APPEAL HANDBOOK

San Bernardino County
Superintendent of Schools

SAN BERNARDINO COUNTY
BOARD OF EDUCATION
MEMBERS

Laura Abernathy Mancha

Hardy Brown II

Rita Fernandez-Loof

Ken Larson

Andrea De Leon

STEP	TIME REQUIREMENTS
Determination of Conduct in Violation of Education Code 48900	Day 1
Suspension	Not more than 5 school days (Education Code 8911)
Recommendation for Expulsion/Extension of Suspension required second Conference	(Education Code 48915) within 5 school days of suspension (Education Code 48911 (g)) requires second conference with Superintendent
	or
Notice of Hearing	Superintendent's designee at least 10 calendar days prior to hearing unless waived
Pupil Request for Open Hearing	At least 5 calendar days preceding hearing
District Extension of Hearing Date	Up to 5 school days "for good cause"
Pupil Postponement	Entitled to not more than 30 calendar days-additional days Board's discretion
Administrative Panel Decision	Within 3 school days
Decision of Governing Board	Within 10 school days of the hearing, or 40th day without pupil request hearing postponement (Education Code 48918(1))

Table of Contents	
Introduction	1
When may an Appeal be Filed with the County Board?	1
How is an Appeal Request Made?	2
What Happens Next?	3
Cost Pursuant to Education Code	4
Scope and Limitations of the Hearing	4
What will happen at The Hearing?	6
How to Prepare for the Hearing	8
Additional Considerations for Special Education Pupils	8
Right to Have an Attorney Present	9
What are Parental Options/Responsibilities Under the Compulsory Education Law if the Expulsion is Upheld?	9
Summary of time Requirements in Expulsion Proceedings	11

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 brochure is intended to provide you with information necessary to appeal an expulsion. This brochure 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 suspensions 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 by the County School's office. Your rights may be lost if you wait until the last minute to file.

*** Notes ***

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.

Right to have an attorney present

This brochure is an aid to help you understand the appeal hearing process. While attorneys are not required, it is the right of the County Board of Education, the district, and the parent or guardian to have an attorney present.

The San Bernardino County Lawyer Referral Service at (909) 888-6791 will provide you with the name of an attorney. 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 Division at (909) 386-2755.

How is an appeal request made?

The pupil or the person having legal custody of the pupil may file an appeal by lodging a letter or form with the office of the San Bernardino County Superintendent of Schools in person or by mail at:

**County Board of Education
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 described in "Scope and Limitations of the Hearing."

What happens next?

Once the Office of the San Bernardino County Superintendent of Schools has received a letter or form requesting an appeal of an expulsion, a hearing date for the case will be set. The hearing must be held within twenty (20) school days after the County Superintendent's office receives a request unless you agree to a longer period by signing a waiver. During this period prior to the hearing, the County Board of Education will request the following information from the local school board/district: copies of the documentation of the hearing;

1. the district's rules and regulations dealing with expulsions; and a statement from the local district regarding whether there exists relevant evidence which, "in the exercise of reasonable diligence, if raised as a grounds of appeal, could not have been produced" during the original hearing.

Expulsion appeal hearings are normally scheduled for the first Monday of each month. Both the parent 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
Determination of Conduct in Violation of Education Code 48900	Day 1
Suspension	Not more than five (5) school days [Ed. Code 48911]
Recommendation for Expulsion/Extension of Suspension required second conference	[Ed. Code 48915] within five (5) school days of suspension [Ed. Code 48911(g)] requires second conference with Superintendent or
Notice of Hearing	Superintendent's designee at least ten (10) calendar days prior to hearing unless waived
Pupil request for Open Hearing	At least five (5) calendar days preceding hearing
District Extension of Hearing Date	Up to five (5) school days "for good cause"
Pupil Postponement	Entitled to not more than 30 calendar days –additional days at Boards discretion
Administrative Panel Decision	Within three (3) school days
Decision of Governing Board	Within ten (10) school days of the hearing, or 40 th day without pupil request hearing postponement [Ed. Code 48918(1)]

How to Prepare for the Hearing

No special expertise is necessary. The members of the Board 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 and Limitations of the Hearing."

Remember that no matter how compelling an appeal is felt to be, the Board 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.

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?

The County Board may Decide One of the Following Actions:

- A. Uphold the local district's decision.
 - B. Reverse the local district board's decision.
 - C. 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 Board may order the pupil reinstated during this time.
 - d. The County Board may conduct its own hearing considering new and original information and render its own decision. If the County Board decides to conduct a hearing, it shall notify the pupil and his/her parents/ guardian and the district of the time, date, and place for such a hearing and their procedural rights.
- Appeal of County Board Decision a final decision by the County Board of Education may be appealed to the Superior Court.

Cost pursuant to the Education Code

The parent/pupil is responsible for requesting from the local school district and providing to the Office of San Bernardino County Superintendent of Schools seven (7) transcribed copies of the local district expulsion hearing.

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

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

Scope and limitations of the hearing

The County Board of Education is required to base its appeal consideration upon the written record of the hearing conducted in the pupil's district. Only in the rare instance discussed in item four (4) may a County Board of Education actually consider new evidence. The four legal grounds for appeal are as follows:

1. DID THE DISTRICT GOVERNING BOARD PROCEED WITHOUT OR IN EXCESS OF ITS JURISDICTION IN EXPELLING THE PUPIL?

Explanation: The California Education Code specifies the reasons for which a pupil may be expelled and the timelines that must be followed during expulsion proceedings.

2. WAS THE PUPIL AFFORDED A FAIR HEARING BEFORE THE DISTRICT GOVERNING BOARD?

Explanation: The district is required to provide a timely notice of the hearing, to allow time to hear and examine all evidence submitted, and a reasonable opportunity to present evidence to deny, explain, or mitigate the allegations.

3. WAS THERE A PREJUDICIAL ABUSE OF DISCRETION BY DISTRICT GOVERNING BOARD?

Explanation: The California Education Code lists offenses that may result in suspension or expulsion and for some offenses require expulsion. A pupil may be expelled only when the district board finds that (1) other means of correction are not feasible, or (2) other means have failed to bring about appropriate conduct, or (3) the pupil's presence at school is a danger to others, or (4) threatens to disrupt the instructional process. If the violation is not listed in the Education Code as well as written as part of the school rules, there are no grounds for expulsion. The district must also meet procedural requirements as described in the California Education Code and local board policy. The district findings must be supported by the evidence contained in the hearing transcript.

4. WAS THERE NEW RELEVANT EVIDENCE OR EXCLUDED EVIDENCE?

Explanation: Explain if there is new relevant evidence, which could not have been produced at the time of the hearing or if there was relevant evidence, which was improperly excluded at the hearing. (If applicable, explain the circumstances and describe briefly the nature of the new or improperly excluded evidence.)

What Will Happen at The Hearing?

When an appeal appears on the County Board agenda, the Board of Education meeting will be close (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 question 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 question listed in "Scope and Limitations."
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.