

Expulsion Appeals

1. Purpose

In the matter of expulsions from schools in San Mateo County, the Board shall serve as the appellate body for a pupil and the pupil's parent, guardian or representative. This policy provides direction for parents, guardians and representatives of pupils expelled from school (hereinafter referred to as "appellant"), for the expelling school district (hereinafter referred to as "respondent"), and for the Board in hearing the appeal and making a decision.

2. Scope of Review

The review by the Board is limited to:

- a. whether the respondent acted without or in excess of its jurisdiction (including situations where an expulsion hearing was not commenced within the time periods prescribed by the Education Code, where an expulsion order was not based upon acts enumerated in the Education Code, or where the expulsion was based upon acts not related to school activity or attendance);
- b. whether there was a fair hearing before the respondent (in which the appellant had an opportunity to be heard and to present evidence, and in which the respondent proceeded in the manner required by law and informed the appellant of his/her rights of appeal);
- c. whether there was prejudicial abuse of discretion in the hearing (including situations where district officials did not meet procedural requirements of the Education Code, where the decision to expel was not supported by the findings prescribed in the Education Code, and where the findings were not supported by the evidence); and
- d. 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.

Appeal before the Board is not a rehearing of the case, but rather a procedural review to determine if the process leading to the expulsion was conducted properly and fairly. The four items listed above are the only grounds for the Board to overturn an expulsion.

3. Time an Appeal May be Filed

An appellant may file an appeal of expulsion to the Board only after all possible resolution at the district level has been exhausted, and must file within thirty calendar

days after the official decision to expel the pupil was made by the respondent. Once the thirty days have passed, the Board will not hear the appeal.

4. Content of an Appeal

An appeal must contain an official transcript of the expulsion hearing and a letter of appeal. The letter of appeal may be submitted on a form provided by the Superintendent or designee and must contain the following information:

- a. Name, address and phone number of the parent or guardian and the name, address and phone number of the person, if any, representing the pupil.
- b. Name of the pupil and of the school/program and district.
- c. Date of expulsion.
- d. Grade most recently attended by the pupil.
- e. A statement of the basis for the appeal, which is based on one or more of the four items listed above as the grounds for Board consideration.

The letter/form must be accompanied by documentation (a letter of request or a proof of service) demonstrating that a transcribed copy of the complete record of the expulsion hearing conducted by the school district has been requested from the respondent. The respondent has ten days to provide appellant with a certified transcription of the hearing. Once the transcript is received, appellant must forward a copy to the Superintendent or designee. The Superintendent or designee may develop forms and/or procedures and distribute such forms and/or procedures to appellants to assist in filing appeals.

5. Time an Appeal Hearing May be Scheduled

When the Superintendent has received a complete, timely, correctly submitted appeal, an appeal hearing date is set. The hearing shall be scheduled for a regular meeting of the Board, and shall be within twenty days of receipt of the completed appeal, when practicable. If the hearing date cannot be set within twenty days, the Superintendent shall schedule the hearing as soon as practicable. Within the time allowed by law, reasonable efforts will be made to schedule the hearing at a time when a maximum number beyond the quorum of the Board will be available.

Both the appellant and the respondent shall be notified at least ten days in advance of the hearing date, and shall be provided with relevant documentation, including this policy.

6. Content of Response to an Appeal

The respondent shall be asked to present documentation related to the appeal, including:

- a. Copies of the documentation of the expulsion hearing, including copies of all correspondence in respondent's file relating to the expulsion, documentary

- evidence before the respondent, excerpts of minutes of relevant meetings, and other pertinent data;
- b. The respondent's rules and regulations dealing with expulsions; and
 - c. A statement of whether there exists relevant evidence that was excluded, or could not have been produced, at the original hearing.

The Superintendent or designee may develop forms and/or procedures and distribute such forms and/or procedures to respondents to assist in responding to appeals.

All of the materials from the appellant and from the respondent will be provided to the appellant, the respondent, and the Board for review prior to the hearing.

7. Process of an Appeal Hearing

Unless special arrangements are required, expulsion appeal hearings shall be held at regular meetings of the Board. Hearings will be held in closed session, unless, at least five days prior to the hearing, the appellant requests an open session. Whether the hearing is open or closed, a record shall be preserved of the oral proceedings of the hearing. If an audio recorder is used, those present at the hearing shall be so informed, and shall be asked to identify himself/herself by name when speaking.

The appellant and the respondent are invited to attend the hearing, but attendance is not required. Both the appellant and the respondent shall be given the opportunity to address the Board. The Board may ask questions of both the appellant and the respondent.

The President of the Board shall preside over the hearing. The order of presentation, determination of who shall represent each of the parties, and the time limits for presentation will be regulated by the President of the Board. Ordinarily, the order of presentation will be as follows:

- a. brief summary of the case by staff;
- b. remarks by appellant;
- c. remarks by respondent;
- d. any final remarks by appellant;
- e. any final remarks by respondent.

During and after such presentations, members of the Board may ask questions, which shall be limited to the scope of review.

After such presentations and questioning, the Board may leave the hearing and conduct deliberations in executive session, and may return to the hearing after such deliberations. At the conclusion of the hearing, the Board will declare the hearing closed, and will convene into open session, and will publicly announce any decision made during the hearing.

8. Decision of the Board

The Board has up to three school days to make a decision. However, a decision is usually made at the hearing. The decision of the Board will fit into one of the following four categories:

- a. Return the matter to the respondent for reconsideration of new information which was improperly excluded or could not have been produced at the original hearing, or for consideration and adoption of findings which were required but not adopted following the original hearing. The Board may order the pupil reinstated pending the respondent's reconsideration.
- b. Conduct a "de novo" hearing, consider new and original information, and render a new decision. If the Board decides to conduct a "de novo" hearing, it shall notify the appellant and the respondent of the time, date and place for such a hearing, as well as their procedural rights.
- c. Uphold the respondent's decision.
- d. Reverse the respondent's decision. If the Board reverses the expulsion, the Board will determine whether to order the respondent to expunge the record of the pupil and the records of the respondent of any references to the expulsion action.

The Board's decision becomes effective immediately and is binding upon the pupil and parent or guardian of the pupil and upon the governing board of the school. A written copy of the Board's decision shall be provided to the appellant and to the respondent within five days of the decision. The Board's decision is final and there is no further administrative appeal process.

Legal References:

Education Code 35291-35291.5 Rules and procedures on school discipline
Education Code 48900-48925 SUSPENSION OR EXPULSION

Adopted SMCBE 02/02/72

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