

*Riverside County Office of Education*  
*Board Bylaw 9611 Expulsion Appeal Rules of Procedure*

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## **STUDENTS**

### **SUBJECT: Expulsion Appeal Rules of Procedure**

#### **A. Purpose and Legal Basis**

These rules of procedure are adopted to implement Education Code Section 48919 which reads in part:

The County Board of Education shall adopt rules and regulations establishing procedures for expulsion appeals conducted under this section. The adopted rules and regulations shall include, but not be limited to, the requirements for filing a notice of appeal, the setting of a hearing date, the furnishing of notice to the pupil and the governing board regarding the appeal, the furnishing of a copy of the expulsion hearing record to the County Board of Education, procedures for the conduct of the hearing, and the preservation of the record of the appeal.

#### **B. Definitions**

1. **Appellant** shall mean pupil, or person having legal custody of the expelled pupil, legal counsel, or designated representative.
2. **Respondent** shall mean the expelling school district defending against the appeal.
3. **County Board** shall mean the Riverside County Board of Education hearing the appeal.
4. **Secretary to the County Board** shall mean the Riverside County Superintendent of Schools.
5. **Day** means a calendar day unless otherwise specifically provided.
6. **Schoolday** means a day upon which the schools of the respondent are in session or weekdays during the summer recess.

#### **C. Construction of Rules**

These rules are to be interpreted in such a manner as to provide a fair and impartial review of the proceedings to both the appellant and the respondent.

#### **D. Scope and Limitations of the Expulsion Appeal**

The County Board is required to base its determination upon the written record of the expulsion hearing conducted before the school district governing board. No other evidence may be considered except as provided in Education Code Section 48923(a)(2). It is not the duty of the County to re-try the issue, but to review the expulsion to assure the proper legal procedures were followed and a fair hearing was conducted. The review by the County Board is limited to the following questions:

1. Whether the district acted without, or in excess of its jurisdiction. A proceeding

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without or in excess of jurisdiction includes, but is not limited to:

- a. a situation where an expulsion hearing is not commenced within the prescribed time periods;
  - b. a situation where an expulsion order is not based upon the acts enumerated in Section 48900; or
  - c. a situation involving acts not related to school activity or attendance.
2. Whether there was a fair hearing before the administrative panel or governing board.
  3. Whether there was a prejudicial abuse of discretion in the hearing A prejudicial abuse of discretion is established in any of the following situations:
    - a. school officials have not met the procedural requirements of this article;
    - b. the decision to expel is not supported by the findings prescribed in Section 48915; or
    - c. the findings are not supported by evidence.

The County Board may not reverse a district's decision to expel based upon a finding of an abuse of discretion unless the County Board also determines that the abuse of discretion was prejudicial.

4. Whether there is relevant and material evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing or which was improperly excluded at the hearing.

**E. Decision of the County Board of Education**

The decision of the County Board shall be limited as follows:

1. 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:
  - a. Remand the matter to the respondent for reconsideration and may, in addition, order the pupil reinstated pending such reconsideration.
  - b. Grant a "hearing de novo" upon reasonable notice to the pupil and to the governing board. The hearing shall be conducted in conformance with the rules and regulations adopted by the County Board under Education Code Section 48919.
2. If the County Board determines 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 records of the proceedings, the County Board shall remand the matter to the governing board for adoption of the required findings. This

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remand for adoption and inclusion of the required findings shall not result in an additional hearing pursuant to Section 48918, except that final action to expel pupil based upon revised findings of fact shall meet all requirements of subdivisions (j) and (k) of Section 48918.

3. 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 local board the County Board may direct the local board to expunge the record of the pupil and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

**F. Pre-Hearing Procedures**

1. Notice of Appeal of Expulsion and Request for Hearing.

A pupil may appeal an expulsion within thirty (30) calendar days following the district board's decision to expel. A copy of the County Board's "Expulsion Appeal Rules of Procedure" (BB 9611) and the "Expulsion Appeal and Request for Hearing" form shall be provided to either party upon request (See Attachment A).

The "Expulsion Appeal and Request for Hearing" form must be completed and filed no later than thirty (30) calendar days following the date of the respondent's decision to expel, unless the 30th day falls on the Saturday, Sunday, or holiday in which case the formal written appeal form must be filed no later than the next business day following the 30th day. "Filing" is complete upon receipt of the written appeal form by the Secretary to the Riverside County Board of Education.

2. Required Information

Upon the form "Expulsion Appeal and Request for Hearing," the appellant shall furnish the following written information to the County Board of Education:

- a. Expelled pupil's name
- b. Age and grade
- c. Name of person having legal custody
- d. Home address
- e. Telephone numbers (home and work)
- f. Name, address and phone number of appellant, if other than expelled pupil
- g. Relationship of appellant to expelled pupil
- h. Name of expelling school district
- i. Date the governing board of expelling school district voted to expel
- j. Grounds or basis for the appeal. The appellant must state in writing the reason or reasons he or she believes that the district governing board acted in error.

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(Refer to Section D, Scope and Limitations of the Hearing.)

- k. Verification that appellant is preparing or causing to be prepared a written transcription of the hearing. (Refer to paragraph 7.a. following.)
- l. Verification that appellant has made arrangements with the expelling school district for copies of all relevant documents in the case as specified in Education Code Section 48919. (Also refer to paragraph 7.b following.)

### 3. Hearing Date

The Secretary to the County Board shall set the date of the hearing at a time within twenty (20) schooldays following the receipt of the formal written request for an appeal hearing before the County Board. Receipt of the completed “Expulsion Appeal and Request for Hearing” form by the Secretary to the County Board of Education shall be deemed receipt of the formal request under Education Code Section 48919.

### 4. Notification of Date, Time, and Place of Hearing

Upon receipt of the “Expulsion Appeal and Request for Hearing” form, the Secretary to the County Board or designee shall notify the appellant and respondent district, by certified mail, of the date and the time the hearing is to begin for the day, and the place of the hearing.

### 5. Continuances of Hearing Date

Written requests for continuances shall be directed to the Secretary to the County Board who may grant a continuance in the following cases:

- a. Request. Appellant or Respondent may request one continuance, in writing, at least forty-eight (48) hours prior to the hearing. The Secretary to the County Board may upon receipt of said request, reset the hearing date to a date not more than thirty-five (35) calendar days after the originally scheduled hearing date, and shall immediately notify the respondent district and appellant in writing of the new hearing date.
- b. Stipulated Continuances. Where appellant and respondent district agree to a continuance, they shall send written notification to the Secretary to the County Board who shall then reset the hearing to the date agreed upon.

### 6. Designated Representatives

The pupil and/or the respondent may be accompanied by legal counsel or other designated representative, and such legal counsel or designated representative shall be afforded an opportunity to speak on behalf of his or her client. If either party wishes to be represented, the name, telephone number and address of such designated representative shall be submitted to the Secretary to the County Board in writing as soon as possible.

### 7. Appellant Responsibilities Prior to the Hearing

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The parent is responsible for immediately requesting the local school district to provide a transcript of the expulsion hearing and a copy of all documents that were presented at the expulsion hearing.

- a. At the same time the Parent files the appeal with the County Board of Education, he or she must submit to the expelling school district a written request for 2 copies of the written transcript of the expulsion hearing and all supporting documents or records. A “Request for Transcript and Supporting Documents” form is attached (See Attachment B).
- b. The parent shall file a copy of the request for the transcript with the County Board of Education at the time of filing the appeal or immediately thereafter.
- c. Upon notification from the school district that they are completed, the parent shall pick up the two copies of the transcript and supporting documents and records. The parent is responsible for the delivery of one copy of the transcript and supporting documents and records to the Secretary to the County Board of Education.

The parent must pay the local school district for the cost of preparing the transcript and copies of supporting documents and records except in one of these situations:

- a. Where the Parent certifies to the school district that he/she cannot reasonably afford the cost of preparing the transcript because of limited income or exceptional necessary expenses, or both. A form, “Certification of Inability to Afford Cost of Transcript” is attached (See Attachment C).
- b. In a case where the County Board reverses the decision of the school district governing board, the County Board shall require that the school district governing board reimburse a Parent who has paid for the cost of preparing the transcript.

#### 8. Respondent Responsibilities Prior to Hearing

The local school district is responsible for preparing a reasonably accurate verbatim transcript of the expulsion hearing, copies of all hearing exhibits, correspondence regarding the suspension and expulsion, including documentation of the findings of fact and recommendation of the administrative panel, if any, conducting the hearing and the governing board's decision. The transcript and other documents must be prepared within (10) schooldays of receipt of request. All documents must be sequentially numbered in the lower right corner commencing on page 1.

The school district shall notify the parent when the two sets of copies of the transcript, supporting documents and records are completed and ready to be picked up.

9. Failure by either party to file required documents in a timely manner may result in a dismissal of the appeal or reversal of the expulsion order. Either party may apply to

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the Secretary to the County Board for a time extension on filing the records. Time will only be extended for good cause.

#### 10. County Board Documents

Upon request, the County Board's file relating to the subject hearing will be open for inspection by appellant and/or respondent school district at reasonable time prior to the hearing. Copies may be obtained by either party upon payment of the reasonable cost of reproduction.

### **G. Hearing Procedures**

#### 1. Preservation of Record

A record of oral proceedings before the County Board shall be preserved. Preservation may be by means of a tape recorder or stenographic notes. If a tape recorder is used, those present shall be so informed and each person who speaks during the hearing (and each time he/she speaks) shall be required to give their name. The minutes of the meeting shall contain a record of all persons present at the hearing.

#### 2. Conduct of Hearing

The President of the County Board or a designee shall preside over the hearing which shall be conducted in closed session, unless the appellant requests otherwise in writing at least five (5) calendar days prior to the date of the hearing. In any event, the County Board may deliberate in closed session. The order of presentation and the time limits for presentation will be regulated at the discretion of the President or a designee.

Ordinarily, the order and limits of presentations will be as follows:

- a. Call to order by the President/designee
- b. Introduction of case
- c. Appropriate remarks by the County Board's counsel
- d. Presentation by appellant (15 minutes)
- e. Presentation by respondent (15 minutes)
- f. Concluding remarks by appellant (5 minutes)
- g. Concluding remarks by respondent (5 minutes)
- h. During and after any of the above presentations, members of the County Board, or its appointed counsel, may direct questions to any persons who appeared before the Board.
- i. At the conclusion of the presentations and the questioning by the Board

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members or its appointed counsel, the President or designee will declare the hearing at an end. The Board may exclude the appellant and respondent and continue in closed session for the purpose of deliberating and reaching a decision on the matter. The Secretary to the County Board and counsel to the County Board may remain with the Board during its deliberation. If during such deliberations, any member of the Board wishes to ask additional questions of any persons who appeared before the Board, then, the President or designee may reopen the hearing for that purpose and both appellant and respondent will be given an opportunity to present additional information in response to the Board member's inquiry.

- j. After its deliberations, the Board shall take action in public session.
- k. Counsel to the Board shall prepare a written decision which will subsequently be presented to the County Board for adoption, and thereafter mailed to the appellant and respondent by certified mail.

**H. Finality of Order of County Board of Education**

The decision of the County Board of Education shall be final and binding upon the pupil and the person having legal custody, and upon the governing board of the respondent.

Attachment A: Expulsion Appeal and Request for Hearing Form No. 1010

Attachment B: Request for Transcript and Supporting Documents from School District

Attachment C: Certification of Inability to Afford Cost of Transcript

Legal Reference:

EDUCATION CODE

- 48919 - Right to Appeal Expulsion
- 48920 - Appeal - Closed Session
- 48921 - Appeal Transcript
- 48922 - Appeal Review Limitations
- 48923 - Appeal Decision Limitations
- 48924 - Appeal Decision Final