

Shasta COE

Board Policy

Expulsion Appeal To County Board Of Education

BP 5144.3

Students

Purpose And Legal Basis

These rules of procedure are adopted to implement Education Code 48915 which reads in part:

The County Board of Education shall establish rules and regulations governing procedures for expulsion appeals pursuant to this section and not in conflict with Sections 48917 and 48920, including, but not limited to, notice of filing such appeal, setting the hearing date, certification to the County Board of the record of the proceedings at the district level, hearing procedures, and preservation of the record of the hearing.

Definitions

Appellant shall mean student or parent/guardian of the expelled student.

Respondent shall mean the expelling school district defending against the appeal.

County Board shall mean the Shasta County Board of Education hearing the appeal.

Secretary to the County Board shall mean the Shasta County Superintendent of Schools.

Construction of Rules

These rules are to be liberally construed in order to accomplish the purpose of providing a fair and impartial review of the proceedings to both the Appellant and the Respondent.

Scope of Review by County Board of Education

1. The County Board shall determine the appeal upon the record of respondent school board. The County Board shall not receive any evidence other than that contained in the record of the proceedings of the respondent school board.
2. The review by the County Board of the decision of respondent school district shall be limited to the following questions:
 - a. Whether the Governing Board has proceeded without or in excess of its jurisdiction.
 - b. Whether there was a fair hearing before the Governing Board.

c. Whether there was a prejudicial abuse of discretion in the hearing. Abuse of discretion is established if:

- (1) The Respondent has not proceeded in the manner required by law.
- (2) The order of decision is not supported by the findings.
- (3) The findings are not supported by the evidence.

d. Whether there is relevant 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.

Decision of the County Board of Education

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

a. Where the County Board finds that relevant 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, or finds that there was otherwise a denial of due process, it may:

- (1) Remand the matter to the Governing Board for reconsideration and may in addition order the student reinstated pending such reconsideration; or, instead,
- (2) Grant a hearing de novo upon reasonable notice thereof to the parent/guardian of the student and to the Governing Board. Such hearing shall be conducted in conformance with the procedures set forth in Education Code 48914.

b. 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 student and the records of the district of any references to the expulsion action and such expulsion shall be deemed not to have occurred.

Prehearing Procedures

1. Notice of Appeal of Expulsion and Request for Hearing

The student or parent/guardian of a student expelled from a public school in Shasta County may, within 30 calendar days following the decision to expel by the school district governing board, appeal the expulsion by the school district to the Shasta County Board of Education by filing with the Secretary to the County Board a written Notice of Appeal of Expulsion and Request for Hearing. A copy of the County Expulsion Appeal Rules of Procedure and the Notice of Appeal form shall be provided to the Appellant and to the Respondent.

2. Required Information

The Appellant shall furnish the following written information to the County Board of Education:

- a. Name of expelled student
- b. Parent/legal guardian
- c. Relationship of Appellant to expelled student
- d. Name of Appellant, if other than student
- e. Home address
- f. Telephone number
- g. Name of expelling school district
- h. Date of expulsion
- i. Grounds or basis upon which the appeal is based. The Appellant must state in writing the reason or reasons he/she believes that the district governing board acted in error.
- j. Verification that Appellant has made arrangements with local school district for the written transcript to be submitted to the County Board of Education.
- k. Signature of Appellant and date.

3. Hearing Date

The Secretary to the County Board shall set the date of the hearing at a time within 20 school days following the receipt of the written request for hearing.

4. Notification of Date, Time and Place of Hearing

Upon the receipt of the Notice of Appeal of Expulsion and Request for Hearing, the Secretary to the County Board shall notify the Appellant and Respondent, by certified mail, of the date, time and place of the hearing.

5. Continuances of Hearing Date

Requests for continuances shall be directed to the Secretary to the County Board. The Secretary to the County Board shall grant a continuance in the following cases:

- a. Stipulated Continuances: Where Appellant and Respondent agree, in writing, to a

continuance to a later date and file such written request with the Secretary to the County Board, then the Secretary to the County Board shall reset the hearing date to the date specified in the written request or to a date as soon thereafter as the matter can reasonably be heard by the County Board.

b. Appellants' Request: Appellant may, as a matter of right, request one continuance by means of a written notice on file at least 48 hours in advance. The Secretary to the County Board shall upon receipt of said request reset the hearing date to a date not more than 35 calendar days after the then scheduled hearing date, and shall immediately notify the Respondent and the Appellant in writing of the new hearing date.

c. Other Requests: In all other cases, upon request for a good cause, a continuance may be granted should the County Board determine that such continuance is necessary to avoid injustice.

6. Representatives

The Appellant and/or the Respondent may be accompanied by an attorney or other representative of his/her choice, and such attorney or representative shall be afforded an opportunity to speak on behalf of his/her client. Either party must disclose to the Secretary to the County Board of Education 10 days prior to the hearing whether or not they will be using representatives.

7. Appellant Responsibilities Prior to the Hearing

It is the responsibility of the Appellant to submit a written transcript of the record of proceedings conducted before the Respondent school district to the Secretary to the County Board at least seven calendar days prior to the scheduled hearing:

a. The cost of such transcript shall be borne by the Appellant except (1) where the Appellant certified that he/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 local governing board pursuant to Subdivision (b) of Education Code 48919, the County Board shall require that the local board reimburse the Appellant for the cost of such transcript.

b. The Appellant shall make arrangements with the local school district for the written transcript to be submitted to the County Board of Education simultaneously with the filing of the Notice of Appeal with the County Board of Education.

8. Respondent Responsibilities Prior to Hearing

a. It is the responsibility of the Respondent school district to have preserved a record of the hearing. Such record may be maintained by any means including electronic recording so long as a reasonably accurate written transcript of the proceedings can be made.

b. The Respondent school district shall file with the Secretary to the County Board at least five calendar days prior to the scheduled hearing certified copies of the following:

- (1) Documentary evidence, if any, presented before Respondent school board or hearing panel.
- (2) Policies, rules and/or regulations of Respondent, if any, which the expelled student was found to have violated.
- (3) All correspondence in Respondent's file, if any, relating to, concerning, or leading to the expulsion. If the correspondence was sent by Respondent by certified or registered mail, copies of the return receipts, if any, should be attached to the appropriate copies of the correspondence.
- (4) Excerpts of all minutes of meetings of Respondent school board concerning either the expulsion proceedings or the expulsion order.
- (5) Any other pertinent data relating to the expulsion proceedings.

9. On application by either Appellant or the Respondent to the Secretary to the County Board for good cause, shown, the time for filing the records may be extended. Failure to file documents required of the parties may result in a dismissal of the appeal or reversal of the expulsion order.

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 at reasonable times prior to the hearing. Copies of any papers filed therein may be obtained by either party upon payment of the reasonable cost of reproduction.

Hearing-Procedures

1. Preservation of Record

A record of oral proceedings before the County Board shall be preserved. Preservation may be by means of tape recorded and/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 his/her 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 in writing at least five calendar days prior to the date of the hearing that the hearing be in a public 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
- b. Introduction of case by the Secretary to the County Board
- c. Appropriate remarks by the County Board's Counsel
- d. Presentation by Appellant (20 minutes)
- e. Presentation by Respondent (20 minutes)
- f. Concluding remarks by Appellant (10 minutes)
- g. Concluding remarks by Respondent (10 minutes)
- h. During and after any of the above presentations members of the County Board may be recognized by the President or designee for the purpose of directing questions to any persons who appeared before the County Board.
- i. At the conclusion of the presentations and the questioning by the County Board members, the President or designee will declare the hearing at an end. The County Board may exclude the Appellant and Respondent and continue in closed session for the purposes of deliberating and reaching a decision on the matter. County Board members may then commence deliberations in private accompanied by the Secretary to the County Board, and counsel to the County Board. If, during such deliberations, any member of the County Board wishes to ask additional questions of any person who appeared before the County 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 County Board member's inquiry.
- j. After its deliberations, the County Board shall take action in public session.
- k. The County Board of Education shall render a decision within three school days of the hearing and a written decision shall be delivered to the Appellant and Respondent by certified mail within a reasonable time thereafter.

Finality of Order of County Board of Education

The decision of the County Board of Education shall be final and binding upon the student and the parent/guardian of the student and upon the governing board of the school district.

Policy SHASTA COUNTY OFFICE OF EDUCATION
adopted: September 26, 2001 Redding, California