

Expulsion Appeal Handbook for Parents

*A Complete Discussion of
the Final Stage of Due Process for
Expelled Students*

Santa Barbara County
School Districts



4400 Cathedral Oaks Road
P. O. Box 6307
Santa Barbara, California 93160-6307
Direct Dial: 964-4710
(805) 964-4711 • FAX: (805) 964-4712



Santa Barbara County Education Office

4400 Cathedral Oaks Road, P.O. Box 6307, Santa Barbara, California 93160-6307
(805) 964-4711 • FAX: (805) 967-0088 • Direct Dial: 964-4710, extension 5213

Service and Leadership • www.sbceo.org

TO: Santa Barbara County Board of Education
4400 Cathedral Oaks Road
P. O. Box 6307
Santa Barbara, CA 93160-6307

ATTENTION: *Fred Razo*
Division of Child Welfare and Attendance

Notice of Appeal (Pupil Expulsion)

NOTE: This *Notice of Appeal*, or intent to file such notice, shall be communicated to the County Board within 30 days following the date of expulsion.

(Please print or type all material except signature.)

1. _____ 2. _____
Name of Pupil Birthdate
3. _____ 4. _____
Street Address City Zip Code Grade
5. _____ 6. _____
School District School
7. Date Local Board Voted to Expel: _____
Month / Day / Year
8. _____ 9. _____
Name of Parents Phone
10. _____
Street Address City Zip Code
11. _____ 12. _____
Guardian Phone
13. _____
Street Address City Zip Code
14. _____ 15. _____
Attorney (if one has been retained) Phone
16. _____
Street Address City Zip Code
17. Parent understanding of reason(s) given by the local board for expulsion: *(Attach copy of notice of expulsion, if possible.)*

The Santa Barbara County Board of Education's review of the respondent district decision shall be limited to the following. See *Expulsion Appeal Handbook for Parents* for further explanation. (Please check one or more, and describe how each applies to your case.)

(Please use another sheet of paper for additional comments, if necessary. Attach any and all pertinent documentation, if any.)

___ 1. Explain how the governing board acted without or in excess of its jurisdiction in expelling the pupil. (See *Expulsion Appeal Handbook for Parents; Education Code* §48900, 48900.2, 48900.3, 48900.4, or 48915.)

___ 2. Explain how the pupil was not afforded a fair hearing before the district governing board. (See *Handbook; Education Code* §48918, §48922.)

___ 3. Explain how there was a prejudicial abuse of discretion by the district governing board in the hearing. (See *Handbook; Education Code* §48900, 48900.2, 48900.3, 48900.4, or 48915, 48918, 48922.)

___ 4. Explain if 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. (See *Handbook; Education Code* §48918, §48922.)

Expulsion hearings are closed to the public unless you request a session open to the public. (*Leave this blank if you wish a closed hearing.*)

___ I am requesting an open (public) session.



I hereby certify that I requested that the district superintendent prepare a transcript of the expulsion hearing and supporting documents on _____ (date).

I further certify that I have received and read the Expulsion Appeal Handbook and understand there are certain requirements that I must comply with in proceeding with this appeal. I understand that this form **must** be filed with the Administrator of Child Welfare and Attendance at the Santa Barbara County Education Office **within 30 calendar days** from the date the district board voted to expel my student.

I further certify that this information is true and correct to the best of my knowledge.

Parent/Legal Guardian Signature (or pupil, if 18 years or older)

Date Delivered or Mailed



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Expulsion Appeal Handbook for Parents

Introduction

If a pupil is expelled from a public school district in Santa Barbara County, the pupil or the parent(s) or guardian(s) of the pupil may file an appeal to the Santa Barbara County Board of Education which shall hold a hearing on the appeal and render a decision.

Santa Barbara County's public school districts include:

| | | | |
|-------------|-----------|--------------------------|------------------------------|
| Ballard | College | Los Alamos | Santa Maria-Bonita |
| Blochman | Cuyama | Los Olivos | Santa Maria Joint High |
| Buellton | Goleta | Montecito | Santa Ynez Valley Union High |
| Carpinteria | Guadalupe | Orcutt | Solvang |
| Casmalia | Hope | Santa Barbara Elementary | Vista del Mar |
| Cold Spring | Lompoc | Santa Barbara High | |

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

The Santa Barbara County Board of Education is committed to objective review of and deliberation upon appeals of expulsion from local school districts.

The information that follows is an attempt to explain the appeal process. However, it is not a substitute for important original sources such as the *California Education Code*, Sections 48900-48924 or the school district's policies and administrative procedures for suspension and expulsion, and school site rules as adopted by the school district's governing board. You are entitled to review the record of the school district's due process hearing and supporting records or documents. You have the right to consult with and engage the services of an advocate or an attorney.

When may an appeal of expulsion be filed with the County Board of Education?

The expelled pupil or the parent(s) or guardian(s) of the expelled pupil may file a notice of appeal with the Santa Barbara County Board of Education within 30 calendar days following the decision by the school district's governing board to expel the pupil. Please keep in mind that **only the governing board of a school district may expel a pupil**. The principal of the pupil's school, or the superintendent of the school district may only recommend the expulsion to the governing board. A hearing officer or an administrative panel may conduct the school district expulsion hearing, develop findings of fact, and make a recommendation to the governing board. However, **there is no expulsion until the school district's governing board decides to expel**.

If thirty (30) calendar days have passed since the decision by the school district's governing board to expel the pupil and you have not yet filed a notice of appeal, you have given up your right to appeal that decision to the Santa Barbara County Board of Education.

A school district governing board may expel a pupil and suspend enforcement of the expulsion and allow the pupil to remain in a district school or program under certain conditions. However, the thirty (30) day time limit still applies even though the pupil continues to attend a district school or program.

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

It is important to understand that an appeal before the Santa Barbara County Board of Education is not a new hearing; rather, it is a review of the record of the school district's proceedings to determine if due process and a fair hearing were provided.

It is not the charge of the Santa Barbara County Board of Education to agree or disagree with the school district governing board's decision to expel, but to ensure that legal procedures were followed and that a fair hearing was conducted.

What must be included in the notice of appeal?

The appeal process is begun by filing a written notice of appeal with the Santa Barbara County Board of Education. The notice of appeal may be submitted in person or by mail to:

Santa Barbara County Board of Education
4400 Cathedral Oaks Road
P. O. Box 6307
Santa Barbara, CA 93160-6307

ATTENTION: *Fred Razo*
Division of Child Welfare and Attendance

The written notice of appeal must contain all the following information:

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. The date of the school district governing board's decision to expel and the effective date of the expulsion
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 conditions described in this handbook under "*Scope and Limitations of the Hearing*." It is insufficient to merely recite the grounds for appeal set forth in the section cited above or in California Education Code Section 48922. Rather, explain as clearly as you can and provide specific information about why the school district governing board's decision should be reversed.

You must use the *“Notice of Appeal (Pupil Expulsion)”* form which is included in this mailing in lieu of writing a letter.

Filing of Transcript and Supporting Documents or Records

On the same day that you file the notice of appeal with the Santa Barbara County Board of Education, you must submit to the expelling school district a request for a copy of the written transcript of the expulsion hearing and all supporting documents or records. A *“Request for Transcript and Supporting Document”* form is included in this mailing.

The school district shall provide Santa Barbara County Education Office with copies of the transcript, supporting documents, or records within ten (10) school days following receipt of your request. The Director of Child Welfare and Attendance for the County Education Office will provide you with a complete notebook including district documentation, district hearing transcript, related Education Code, and County Board of Education Policy and Regulations.

You must bear the cost of preparing the transcript and copies of supporting documents or records except in either of these situations.

1. Where you 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;
2. In a case where the Santa Barbara County Board of Education reverses the decision of the school district governing board, the County Board shall require that the school district governing board reimburse you for the cost of preparing the transcript and supporting documents or records.

A form, *“Certification of Inability to Afford Cost of Transcript,”* is included in this mailing.

Setting a Date for Hearing the Appeal

Once you have filed the written transcript of the expulsion hearing and copies of the supporting documents or records with the Santa Barbara County Education Office, the County Superintendent of Schools will place the appeal on the agenda of the County Board of Education. The County Board will hold a hearing within twenty (20) school days following the filing of a written notice of appeal and shall render a decision within three (3) school days of the hearing, unless you request a postponement (EC 48919). Both you and the school district will be sent notices by mail at least ten (10) calendar days before the hearing regarding the date, time, and place of the hearing.

The hearing will be held in closed session unless you request open session in writing either by an indication in the space provided on the *“Notice to Appeal”* form or by a separate written request filed with the County Education Office at least five (5) days prior to the date of the hearing (EC 48920).

Filing Written Arguments

You or your representative, if any, may file a written argument or an appeal brief with the County Board. Such written argument must be filed at least ten (10) school days prior to the

date set for the hearing before the County Board. You must simultaneously send or deliver a copy of your argument or brief and all other filed documents to the school district.

The school district has the right to respond by submitting any documents constituting a part of the record which you did not submit. In addition, the district has the right to submit a written argument or reply brief. The district's responses, if any, shall be filed not less than five (5) school days prior to the date of the hearing. The district shall also serve you or your representative, if any, with a copy of its reply brief or written argument. Such service shall be by personal service or by mailing not later than the date upon which the district's reply argument or brief is filed with the County Board.

Scope and Limitations of the Hearing

The Santa Barbara County Board of Education 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. Please keep in mind that the County Board's charge is to determine if the pupil's due process rights were violated in a manner which resulted in the pupil's receiving an unfair hearing. It is not the charge of the Santa Barbara County Board of Education to agree or disagree with the school district governing board's decision to expel the pupil, but to ensure that legal procedures were followed and that a fair hearing was conducted (EC 48921).

The County Board may grant a new (*de novo*) hearing if it finds that:

1. Relevant and material evidence exists which, in the exercise of reasonable diligence, could not have been produced at the school district expulsion hearing; or
2. Relevant and material evidence exists which was improperly excluded at the school district expulsion hearing.

In either case, the County Board may either:

1. Remand (send) the matter to the school district governing board for reconsideration, along with such instructions the County Board may deem necessary. The County Board may order reconsideration of the entire matter or any part thereof. The County Board may order the pupil reinstated pending such reconsideration; or
2. Grant a new hearing (a hearing *de novo*) before the Santa Barbara County Board of Education upon reasonable notice to all parties and in conformance with regulations of the County Board.

If the County Board determines that neither a remand nor a new hearing before the County Board is appropriate, the County Board will decide the appeal upon review of the record of the school district's expulsion hearing. The review shall be limited to the following four questions:

1. **Whether the school district governing board acted without or in excess of its jurisdiction.**

Explanation: The *California Education Code* (EC 48900, 48900.2, 48900.3, 48900.4, and 48915) specifies the reasons for which a pupil may be expelled, the timelines that must be followed during expulsion proceedings, and that the violation(s) must be related to school activities or attendance.

For example:

- Was the offense or infraction for which the pupil was expelled a ground for expulsion authorized by state law or local board rule? A pupil may not be expelled unless the infraction or offense is a violation of the *California Education Code* or school rules adopted under EC 35291.5.
- If the expulsion was based on a local board rule, was the rule a reasonable and valid one and not inconsistent with state law?
- Did the situation involve acts not related to a school activity or to school attendance?
- Was the expulsion hearing commenced within the time limits prescribed by law?

2. **Whether there was a fair hearing before the governing board.**

Explanation: The school district is required to provide you timely notice of a hearing, to allow you to hear and examine all evidence submitted, and a reasonable opportunity to present your evidence to deny, explain or mitigate the allegations [EC 49011(g) and 48918]. Although only the governing board may take action to expel, it may appoint an administrative panel or hearing officer to hear the case, develop a finding 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.

For example:

- Was the pupil denied the right to be represented by an advocate or by legal counsel?
- Was the pupil prohibited from introducing testimony of witnesses on his/her behalf?
- Was the evidence submitted in support of the expulsion the kind of evidence upon which reasonable persons are accustomed to rely in conduct of serious affairs?
- Was there a failure to introduce any evidence to support the decision to expel?
- Was the pupil or the pupil's representative, if any, given an opportunity to confront and question any witnesses who testified at the hearing except as provided in EC 48918(f)?

3. **Whether there was a prejudicial abuse of discretion in the hearing.**

Explanation: Under the law (EC 48922) an abuse of discretion (although not necessarily a prejudicial abuse) would be established:

- (a) if the school district governing board did not proceed with the expulsion in the manner required by law; or
- (b) if the decision to expel is not supported by the findings prescribed by EC 48915; or

- (c) if the findings are not supported by the evidence.

The Santa Barbara County Board of Education 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 or discretion was prejudicial to the student.

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 school district's expulsion hearing.

Explanation: Sometimes evidence which reasonably could have altered the outcome of the school district's expulsion hearing 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) remand the case back to the school district governing board for reconsideration; or
- (b) conduct its own new hearing (*de novo*).

If the County Board finds that a new hearing is not warranted, it will enter an order either affirming or reversing the school district governing board's decision. If the County Board reverses the school board's decision, the County Board may also direct the school board to expunge all records of the expulsion [EC 48923(b)] and, in addition the County Board shall direct the school board to reimburse you for the costs, if any, which you incurred for written transcription of the record submitted for review by the County Board [EC 48921(2)].

The decision by the Santa Barbara County Board of Education is final and binding upon the pupil and upon the governing board of the school district. You and the governing board will be notified of the final order of the County Board, in writing, either by personal service or by certified mail. The order shall become final when rendered. (EC 48924)

Hearing your Appeal of Expulsion

Appeals of expulsion are heard by the County Board in closed session, unless you request, in writing, open session at least five (5) days prior to the date set for the hearing. If you request open session in a timely manner, the public, including representatives of the media, may attend the hearing. If open session has not been requested, 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: you, that is, you personally as well as the pupil and the other parent or guardian; your representative, if any; the members of the Santa Barbara County Board of Education; counsel to the County Board, if any; the school district's spokesperson(s); the school district's legal representative, if any; the County Superintendent and any staff necessary to conduct the meeting.

A tape recorder will be in operation throughout the hearing.

The President of the County Board or the designated presiding officer for the hearing will introduce the matter for the record including identifying by name all of the parties to the matter who are present.

The pupil or the parent or guardian of the pupil or the pupil's representative, if any, will be asked by the presiding officer to present the opening statement. This is an opportunity for you to elaborate upon or to explain more fully the information presented in the notice of appeal you filed and in the additional written argument or appeal brief you may have filed. It is important here to remember to remain focused upon the record of the expulsion hearing and the four (4) questions to which review by the County Board is limited. 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.

You will then be invited to provide a closing statement or rebuttal to the school district's statement.

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 County Board will either retire to another room to deliberate or excuse from the Board Room all present except the County Board, the Board's counsel, if any, the County Superintendent and any necessary staff. If, during deliberations, the County Board admits any representative of the pupil or the school district, the Board shall, at the same time, admit representatives from the opposing party (EC 48920).

After deliberating, the County Board will convene in open session. The presiding officer will request a motion on whether to affirm or to reverse the action of the school district governing board. If the County Board enters a decision reversing the school board's decision, the County Board may direct the school board to expunge the record of the pupil and the records of the district of any references to the expulsion action and the expulsion shall be deemed not to have occurred. Although the County Board must render a decision within three (3) school days of the hearing, it usually renders its decision on the day of the hearing.

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

- The Santa Barbara County Board of Education may not substitute its judgment for the judgment of the school district governing board.
- The County Board may not reverse a school district governing board's decision because of technical inadequacies in the hearing process unless it first determines that the error was prejudicial.
- 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 do only the following:

- (1) Where it 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 expulsion hearing, it may:
 - (a) Remand the matter to the district for reconsideration (and at the same time, it may order the pupil reinstated pending such reconsideration if it wishes to do so); or

- (b) Grant a new hearing (a hearing *de novo*) upon reasonable notice to the pupil and to the school district's governing board. The new hearing is conducted in conformance with rules and regulations adopted by the County Board.
- (2) In all other cases, it shall enter an order either affirming or reversing the decision of the school district's governing board. If it reverses the decision, it may also direct the school district to expunge the record of any reference to the expulsion (EC 48923).

The decision of the Santa Barbara County Board of Education shall be final and binding upon the pupil and upon the governing board of the school district. The order shall become final when rendered. The pupil and the school district governing board shall be notified of the final order of the County Board, in writing, either by personal service or by certified mail (EC 48924).

Your Options and/or Responsibilities under California's Compulsory Attendance Law if Expulsion is Upheld

- If you intend to remain resident in the school district from which your child was expelled, obtain a copy of its procedures on readmission of expelled pupils and determine the date upon which you may apply for readmission. Part of the decision to expel should be a rehabilitation plan for the student from the expelling school district.
- 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 (EC 48915.1 and 48918).
- You may seek enrollment of the pupil in another school district. You may apply directly to the district without an interdistrict attendance transfer. You must inform the proposed new school of the expulsion or any pending expulsion. School districts are not currently required to enroll students who have been expelled from another school district.
- You may apply for admission of the pupil in a private school. You must inform the private school of the expulsion or any pending expulsion.
- 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 Santa Barbara County Education Office (El Puente Community School). Contact the Santa Barbara County Education Office at (805) 964-4711, ext. 5214, for the phone number of the Community School closest to you.



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(Request for Transcript and Supporting Documents from School District)

Date: _____

Superintendent's Name

School District Name

School District Street Address

City

State

Zip Code

Dear _____,
Superintendent's Name

This is to inform you that I am filing a *Notice to Appeal (Pupil Expulsion)* with the Santa Barbara County Board of Education relative to the district's expulsion of my daughter/son (_____). Education Code Sections 48919 and 48921 require that I request from you a transcript of the expulsion hearing and supporting documents certified by you or by the Clerk of the Board to be a true and complete copy. Under Education Code 48921, I understand that the cost of preparing this transcript is borne by me unless (1) I certify that I am unable to afford the cost because of limited income and/or exceptional necessary expenses, or (2) the decision to expel is reversed by the Santa Barbara County Board of Education (reimbursement).

I understand that these documents will be prepared within ten (10) school days of this request and the filing of the *Notice of Appeal* with the Santa Barbara County Board of Education, provided my request is within 30 days of the school board's decision to expel. Santa Barbara County Board of Education procedure requires that your office send a copy of the transcript and supporting documents directly to:

Santa Barbara County Education Office
4400 Cathedral Oaks Road
P. O. Box 6307
Santa Barbara, CA 93160-6307

ATTENTION: *Fred Razo*
Division of Child Welfare and Attendance

You may contact me regarding this request at _____.
Telephone Number

Sincerely,

Signature

Print Name

NOTE: This letter must be received by the school district superintendent on or before the date you file the *Notice of Appeal* with the Santa Barbara County Education Board of Education.



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(Certification of Inability to Afford Cost of Transcript)

Date: _____

Superintendent's Name

School District Name

School District Street Address

City

State

Zip Code

Dear _____,
Superintendent's Name

This is to certify that I, the parent of _____,
for the reasons listed below, cannot reasonably afford the cost of the district's expulsion hearing transcript. I request that the transcript be provided to me without cost because of:

Limited income (*explain*): _____

Exceptional necessary expenses (*explain*): _____

Sincerely,

Signature

Print Name