



Santa Barbara County Education Office
Expulsion Appeal Guide

INTRODUCTION

A statutory responsibility of the Santa Barbara County Board of Education (County Board) is to decide appeals filed after a student is expelled from a public school district in Santa Barbara County.

Santa Barbara County Education Office (County Education Office) developed this guide to explain the expulsion appeal process. To obtain information and forms regarding expulsion appeals, please visit our Child Welfare and Attendance website at: sbceo.org/domain/23.

The information contained in this guide is not legal advice, nor is it a substitute for consulting applicable law, including Education Code sections 48900-48927, and/or consulting with legal counsel.

HOW DO I APPEAL AN EXPULSION TO THE COUNTY BOARD?

When a student is expelled from a public school district in Santa Barbara County, the student (or the student's parent/guardian) may file an appeal to the Santa Barbara County Board of Education within thirty (30) calendar days following the final decision by the school district's governing board to expel the student. A student who fails to file an expulsion appeal within the prescribed time waives their right to appeal the expulsion to the County Board.

The thirty (30) calendar day deadline runs from the date that the governing board votes to expel the student, even if enforcement of the expulsion is suspended and the student is placed on probation. A student who fails to appeal a governing board's vote to expel the student within the prescribed time may not subsequently appeal the governing board's vote to revoke probation and impose the original order of expulsion.

To file an appeal to the County Board, please submit a completed Expulsion Appeal form (available on the Santa Barbara County Education Office website or by request) in person or by certified mail to the address listed below.

Santa Barbara County Education Office
Attention: Rene Wheeler, Child Welfare and Attendance
4400 Cathedral Oaks Road
Santa Barbara, CA 93110

Please contact Rene Wheeler, Child and Welfare Attendance, at (805) 928-0698 with any questions.

At the time you file an appeal to the County Board, you must also send a written request to the expelling school district for a copy of the record of the student's expulsion hearing,

which will include the written transcript of the expulsion hearing, supporting documents, and records. A sample transcript request letter to be sent to the school district is included as Attachment A.

Typically, the school district will have a taped record of the hearing that must be transcribed into written form for the appeal. You will be responsible for the cost of the transcription and preparation of the requested materials. If the County Board grants your appeal, the school district is required to reimburse you any costs you have paid to the district for a copy of the record. If you cannot afford the cost due to limited income or exceptional necessary expenses, you may request that the transcript be provided to you without cost by sending the school district certification of your inability to afford the transcript. A sample certification letter to be sent to the school district is included as Attachment B. This letter (Attachment B) should be sent to the school district at the same time you send your transcript request letter (Attachment A).

The school district must provide you with the hearing transcript, supporting documents, and records within ten (10) school days following your written request. The school district must also provide a copy of these materials to the County Board.

WHAT HAPPENS AFTER I FILE AN EXPULSION APPEAL?

The County Board will hold a hearing within twenty (20) school days after the request for an appeal has been received, following the filing of an appeal. This time period may be extended by agreement of the parties to allow for more flexibility in scheduling the hearing. Typically, appeal hearings are held in conjunction with the County Board's regularly scheduled meetings. The County Education Office will send notice by mail of the date, time, and place of the hearing at least ten (10) calendar days before the scheduled hearing.

The notice of the hearing will contain a statement that the County Board intends to hold the hearing in closed session (not open to the general public) (Ed Code § 48920). The County Board will hear the expulsion appeal in closed session unless you request in writing that the hearing take place in an open meeting. You may request that the hearing take place in an open session by indicating this on the Expulsion Appeal form when you submit it to the County Education Office or by notifying the County Education Office of your request in writing (by personal delivery or email) at least five (5) days prior to the hearing date.

You or your attorney may submit a written argument/brief in support of your appeal by delivering it (by personal delivery or by email) to the County Education Office at least ten (10) school days prior to the date set for the hearing. You or your attorney must also deliver a copy of your written argument/brief to the school district. This may be done by personal delivery, by email, or by mailing it to the school district on or before the date that the argument/brief is delivered to the County Education Office.

The school district has the right to submit a written argument/brief in reply to your argument/brief by delivering it (by personal delivery or by email) to the County Education Office at least five (5) school days prior to the date set for the hearing. The school district must also deliver a copy of its written reply to you. The school district may do this by personal delivery, by email, or by mailing it to you on or before the date that the reply is delivered to the County Education Office.

WHAT WILL THE COUNTY BOARD CONSIDER ON APPEAL?

The County Board of will determine an expulsion appeal based upon the written record of the expulsion hearing held before the governing board in the student's school district. This will include the written transcript of the expulsion hearing, supporting documents, and records. Only under special circumstances (discussed in item 4, below) will the County Board consider new evidence that was not included in the district record.

The County Board's role in an expulsion appeal is limited to determining if the student's due process rights were violated in a manner which resulted in the student receiving an unfair hearing. Under Education Code § 48922, the County Board's review of the school district's decision is limited to the following questions:

- 1) Whether the governing board of the school district acted without or in excess of its jurisdiction.
- 2) Whether there was a fair hearing before the governing board.
- 3) Whether there was a prejudicial abuse of discretion in the hearing.
- 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 hearing before the governing board.

You may wish to address these questions (and the related explanations, below), in preparing your appeal.

- 1) Did the school district board proceed without or in excess of its jurisdiction in expelling the student?

Explanation: Under Education Code § 48922(b), a proceeding without or in excess of jurisdiction includes, but is not limited to:

- A situation where an expulsion hearing is not commenced within the time periods prescribed in the Education Code (Ed Code §§ 48915-48918.5);
- A situation where an expulsion order is not based upon the acts enumerated in Education Code section 48900; or
- A situation involving acts not related to school activity or attendance.

- 2) Was the student afforded a fair hearing before the district board?

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

3) Was there a prejudicial abuse of discretion by the district board?

Explanation: Under Education Code § 48922(c), an abuse of discretion is established in any of the following situations:

- If school officials have not met the procedural requirements for an expulsion under the Education Code (Ed Code §§ 48900-48927).
- If the decision to expel a pupil is not supported by the findings prescribed by Education Code section 48915.
- If the district board's findings are not supported by the evidence.

A county board of education may not reverse the decision of a governing board to expel a student based upon a finding of abuse of discretion unless the county board also determines that the abuse of discretion was prejudicial.

4) Is there now relevant and material evidence which, with reasonable diligence, could not have been revealed in the hearing before the district board, and was not produced, or was improperly excluded?

Explanation: Sometimes evidence, including documents and witnesses, are not known or are unavailable at the time of the hearing, through no fault of the student. Additionally, the school district incorrectly may not have allowed certain documents or witnesses to be presented during the hearing. If the County Board finds that any such evidence, had it been considered by the governing board during the expulsion hearing, could reasonably have resulted in a different decision, the County Board may, under Education Code § 48923: 1) remand the case back to the school district for a redetermination by the governing board, or; 2) grant a new (de novo) hearing in which, after giving reasonable notice to the student and the school district, the County Board will conduct a hearing in accordance with its procedures, consider all of the evidence, and determine all of the issues previously considered by the school district governing board.

WHAT HAPPENS AT THE EXPULSION APPEAL HEARING?

At the hearing, the student (and/or the student's parent/guardian) and the representatives of the school district will be seated in front of the County Board. The student, the school district, and the County Board all have the right to have legal counsel present at the hearing. The hearing will be recorded. If the student has requested an open meeting, the public, including the media, will also have the right to be present.

The hearing will be conducted as follows:

1. The County Board President (or the designated Chair of the hearing) will preside over the hearing. The County Board President will introduce the matter for the record, including identifying all of the parties by name to the matter who are present. Individuals who may participate in the hearing are:
 - a. the expelled student and their parent or guardian;
 - b. the student's legal counsel,
 - c. the members of the County Board;
 - d. the County Board's legal counsel,
 - e. the school district's representative(s);
 - f. the school district's legal counsel,
 - g. the County Superintendent of Schools, and;
 - h. any Santa Barbara County Education Office staff necessary to conduct the meeting at which the hearing takes place.
2. The student, parent/guardian, or legal counsel for the student will be allowed to present the initial opening statement. A written brief may be submitted by each of the parties prior to the opening of argument but will not be considered as "evidence."
3. Following the opening statement, the school district will then make an oral response.
4. The student, parent/guardian, or counsel for the student will then have an opportunity to make a reply to the district.
5. During or after the arguments, members of the County Board may question both sides and request clarification of certain facts and circumstances relating to the school district's expulsion hearing.
6. Upon completion of the arguments and questioning by the County Board, all those present will be excused by the County Board President. The County Board members will then deliberate in closed session. The County Board will deliberate in closed session regardless of whether the hearing is conducted in closed or open session (Ed

Code § 48920). During deliberation, the County Board may reconvene the hearing to call back any party for further questioning. If this occurs, all parties must be present before the hearing is reconvened.

7. Prior to making a final decision, the County Board may (under Ed Code § 48923(a)):
 - a. Remand the case to the district for reconsideration in light of new evidence which was not considered in the district proceeding. The County Board may order the student to be reinstated pending the reconsideration hearing, or;
 - b. Conduct a new hearing (a "hearing de novo") to consider all of the evidence. If the County Board decides to have a new hearing, it will contact representatives of the student and the district as to scheduling.
8. Otherwise, following deliberations, the County Board will convene in open session to announce its final decision. The County Board has up to three (3) school days to finalize its decision in writing.
9. In its final decision, the County Board may (under Ed Code § 48923(b) and (c)):
 - a. Remand the matter to the district governing board to adopt and include the required findings under Evidence Code § 48915, based upon the evidence existing in the district record;
 - b. Affirm the school district's decision to expel the student, or;
 - c. Reverse the school district's decision to expel and reinstate the student.

If the County Board reverses the school board's decision, the County Board may also direct the district board to expunge all records of the student's expulsion (Ed Code § 48923) and direct the district board to reimburse the student for the costs, if any, which were paid to the district for written transcription of the record submitted for review by the County Board (Ed Code § 48921).

HOW WILL I BE NOTIFIED OF THE COUNTY BOARD OF EDUCATION'S DECISION?

The decision when rendered by the County Board shall become final and binding upon the student and upon the district board. The student and the district board will be notified of the final order of the County Board, in writing, either by personal service or by certified mail.

WHAT AM I REQUIRED TO DO IF THE EXPULSION IS AFFIRMED?

1. Contact the school district and ask for a copy of its procedures to review and readmit the expelled student.
2. If the student has moved to another district, the law requires that the new district be notified of the expulsion or any pending expulsion (Ed Code § 48915.1 and § 48918).
3. A student may apply to another district and must inform its staff of the expulsion order or any pending expulsion.
4. A student may apply for admission to a private school or a charter school.
5. A credentialed teacher may be employed to instruct the student in the appropriate grade level (home tutoring).

ATTACHMENT A
Sample 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 an *Expulsion Appeal* with the Santa Barbara County Board of Education relative to the district's expulsion of my student (_____). 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 *Expulsion 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
Santa Barbara, CA 93110
ATTENTION: *Rene Wheeler*
Director 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 *Expulsion Appeal* with the Santa Barbara County Education Board of Education.

ATTACHMENT B
Sample 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/guardian 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