

Procedures for Expulsion Appeal

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 need 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 appeal.

B. Definitions

Appellant shall mean the expelled pupil (hereafter called "pupil") and/or the parent/guardian of the pupil, respondent shall mean the expelling school district, the County Board shall mean the Humboldt County Board of Education hearing the appeal, and the Secretary to the County Board shall mean the Humboldt County Superintendent of Schools.

C. 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 of both the Appellant and the Respondent. If any provision herein shall be in conflict with a provision of the Education Code or a Rule of the State Board of Education such code or rule provision shall prevail over these rules.

D. 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 unless a de novo hearing is granted under Education Code Section 48921 and 48923(a)(2) and part E(l)(a)(2) hereof.

Administrative Regulation 5144.3 (b)

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 acted without or in excess of its jurisdiction.

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 by Education Code Section 48918, 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.

b. Whether there was a fair hearing before the Respondent's 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; or

(2) The decision to expel is not supported by the findings as required by Education Code Section 48915; or

(3) The findings are not supported by the evidence; and

(4) The County Board determines that the specific abuse of discretion was prejudicial to the pupil.

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.

E. Decision of the County Board of Education

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

Administrative Regulation 5144.3 (c)

- a. Where the County Board finds that relevant evidence exists, in which the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the governing board it may:
 - (1) Remand the matter to the Respondent for reconsideration and may in addition order the pupil reinstated pending such reconsideration; or
 - (2) Grant a hearing de novo upon reasonable notice thereof to the Appellant and to the Respondent. Such hearing shall be conducted in conformance with the procedures set forth herein for hearings. Such de novo hearing shall entail a complete retrial of the matter.
- b. In all other cases, the County Board shall enter an order either affirming or reversing the decision of the Respondent. In any case in which the County Board enters a decision reversing the local board, the County Board may direct the local boards 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

The pupil or parent/guardian of a pupil expelled from a public school in Humboldt County may, within 30 calendar days following the decision to expel by the school district governing board, appeal the expulsion to the Humboldt County Board of Education by filing with the Secretary to the County Board a written Notice of Appeal of Expulsion and Request for Hearing. The Secretary of the County Board shall develop the required form. 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 by the Secretary to the County Board.

Administrative Regulation 5144.3 (d)

2. Required Information

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

- a. Name of expelled pupil.
- b. Parent/legal guardian.
- c. Relationship of Appellant to expelled pupil.
- d. Name of Appellant, if other than pupil.
- e. Home address or other address for the purpose of mailing a Notice of Hearing and other official notices.
- f. Telephone number.
- g. Name of expelling school district.
- h. Date of expulsion (the date the Respondent's governing board voted to expel, even if enforcement has been suspended).
- i. Whether or not enforcement of the expulsion action has been suspended or the pupil placed on probation under Education Code Section 48917.
- j. The name, address and telephone number of any representative who will appear at the hearing.
- k. Grounds or basis upon which the appeal is based. The Appellant must state in writing the reason or reasons he or she believes that the district governing board acted in error.
- l. Verification that Appellant has made arrangements with the local school district for the written transcript to be submitted to the County Board of Education.
- m. 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 Notice of Appeal of Expulsion and 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.

Administrative Regulation 5144.3 (e)

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 Boards 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. Appellant's Request: Appellant may, as a matter of right, request one continuance by means of a written notice actually received by the Secretary to the County Board no less than 48 hours in advance of the set hearing time. 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.

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

6. Representatives: The Appellant and the Respondent may be accompanied by an attorney or other representative who shall be afforded an opportunity to speak on behalf of his or her client. Each party must disclose to the Secretary of the County Board of Education in less than two 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 of the County Board at least five calendar days prior to the scheduled hearing:

Administrative Regulation 5144.3 (f)

- a. The cost of such transcript shall be borne by the Appellant except
 - (1) where the Appellant certifies to the expelling school district that he or she cannot 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 Respondent, pursuant to Subdivision (2) of Education Code Section 48921, the County Board shall require the Respondent reimburse the Appellant for the cost of such transcript.
- b. The Appellant shall be responsible to make arrangements with the Respondent 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, Appellant shall request a copy of the written transcript(s) and supporting documents from the Respondent.

8. Respondent Responsibilities Prior to Hearing

- a. It is the responsibility of the Respondent to have a preserved record of its expulsion 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. Within five calendar days following the Appellant's request, the Respondent school district shall provide the Appellant certified copies for filing of the following:
 - (1) Documentary evidence, if any, presented before Respondent school board of hearing panel.
 - (2) Policies, rules and/or regulations of Respondent, if any, which the expelled pupil 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.

Administrative Regulation 5144.3 (g)

- (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.
 - (6) The record referred to in part “a” hereof.
9. On application by either Appellant or the Respondent to the Secretary of the County Board and for good cause, the time for filing the records may be extended. Failure to timely file required documents may result in a dismissal of the appeal or reversal of the expulsion order based upon a party's willful failure to comply with these rules or applicable law.

10. County Board Documents

Upon request, the County Board's file relating to the subject hearing will be open for inspection by Appellant 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.

G. Hearing-Procedures

1. A record of oral proceedings before the County Board shall be preserved. Reservation may be by means of tape recorded or stenographic notes. 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 a public session. The order, or 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 Board.

Administrative Regulation 5144.3 (h)

- c. Appropriate remarks by the County Board's counsel.
- d. Appellant's argument based upon record (20 min.).
- e. Respondent's argument based upon record (20 min.).
- f. Summary and rebuttal remarks by Appellant (10 min.).
- g. Summary and rebuttal remarks by Respondent (10 min.).
- 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 Board.
- i. At the conclusion of the presentations and the questioning by the Board members, 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 purposes of deliberating and reaching a decision on the matter accompanied by the Secretary to the County Board and counsel to the County Board. If, during such deliberations, any member of the Board wishes to ask additional questions of any person 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 comment in response to the Board member's inquiry.
- j. The County Board of Education shall render a decision in public session within three school days of the hearing.
- k. The Board's action may either be voted upon in open session, or, if a vote was taken in closed session, then a roll call report of the vote shall be announced in open session in accordance with Brown Act requirements.

H. Finality of Order of County Board of Education

The decision of the County Board of Education shall be final and binding upon the Appellant and upon the Respondent. The Appellant and Respondent shall 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.

Legal Reference:
Education Code
48919-48925

Regulation

HUMBOLDT COUNTY OFFICE OF EDUCATION

Approved: August 21, 1989

Eureka, California

Revised: March 9, 2011

Renumbered from 5144.1 to 5144.3: July 7, 1999