

**EXPULSION APPEAL
HANDBOOK
KINGS COUNTY OFFICE
OF EDUCATION**

Introduction: The Kings County Office of Education is not part of any local school district. It is an intermediate educational agency linking the State Department of Education with the county's local school districts. The governing board of the Kings County Office of Education is called the Kings County Board of Education ("County Board"). Administrative leadership and direction is provided by an elected official, the Kings County Superintendent of Schools ("County Superintendent").

One of the duties and responsibilities of the County Board is to hear expulsion appeals from school districts within Kings County. These include the Armona Union Elementary School District, Central Union School District, Corcoran Unified School District, Hanford Elementary School District, Hanford Joint Union High School District, Island Union Elementary School District, Kings River-Hardwick Union School District, Kit Carson Union School District, Lakeside Union School District, Lemoore Union Elementary School District, Lemoore Union High School District, Pioneer Union Elementary School District, Reef-Sunset Unified School District, and schools operated by the Kings County Office of Education.

In hearing the appeals, the County Board is committed to fairness in its deliberations. To achieve fairness, the Board wishes to ensure that pupils and parents/guardians are aware of their right to appeal and understand the appeal process.

This brochure is intended to provide you with necessary information should you consider appealing an expulsion order by your local school board. While this brochure is very understandable and informative, it is not a substitute for important original sources such as the California Education Code (i.e., Education Code sections 48900—48924), your local school district's policies, rules and regulations, and County Board Policy 5119. You are also entitled to receive and review a copy of the "record" of the expulsion process, including the transcripts of the expulsion hearing, and to consult with and engage the services of an advocate or an attorney.

Please note, if there is any conflict between this brochure and the provisions of the California Education Code, state or federal case law, or County Board Policy 5119, the latter provisions shall prevail.

When May an Appeal be Filed with the Kings County Board of Education? Under California law, the pupil, parent or guardian has a right to file an appeal within 30 calendar days following the expulsion decision of a local school board. Board according to its procedures. If an appeal is not filed within the 30 day period, the County Board cannot consider/hear the appeal. The appeal must be filed, in writing, with the County Board according to its procedures. If an appeal is not filed within the 30 day period, the County Board cannot consider/hear the appeal.

An appeal may be made when the pupil, parent or guardian believes that the local school board committed a legal mistake/error in making its expulsion decision. Please see the tab entitled "Scope and Limitations of the Hearing" for a description of the types of legal mistakes and errors that the County Board may consider in reviewing the case on appeal.

It is also critical to understand that the County Board, as part of its appellate role, cannot reconsider and reweigh the facts and evidence that were presented as part of the expulsion hearing before the administrative panel and/or the local school board. The County Board must accept the facts and evidence (as contained in the record and transcripts) as presented, and determine if the local school board made a legal mistake/error in making its expulsion decision based upon those facts/evidence.

As a result, the County Board cannot accept any new facts or evidence (with limited exceptions) in making its decision on appeal. For the most part, the parties are limited to arguing the extent, if any, to which the school district administration and/or the local school board made a legal mistake/error.

How is a Hearing Request Made: The pupil, parent or guardian may file an appeal by submitting a letter ("notice of appeal") to the County Board in person or by mail to:

Kings County Office of Education
Attn: County Superintendent of Schools
1144 W. Lacey Boulevard
Hanford, California 93230

The notice of appeal must contain the following information:

1. Name, address, and telephone number of the parent or guardian and advocate or legal representative, if any.
2. Name of expelled pupil.
3. Grade attended by pupil.
4. School and district from which expelled.
5. A brief statement of the reason(s) why the expulsion should be set aside and the pupil re-enrolled.

Ten (10) calendar days prior to the hearing date before the County Board, a transcribed copy of the complete record of the expulsion hearing must be received by the County Superintendent. It is the responsibility of the appellant to obtain from the school district and ensure that a complete copy of the record/transcripts is delivered to the County Superintendent. Failure of the appellant to provide a written record/transcripts to the County Board within 10 days prior to the hearing date may result in dismissal of the appeal by the County Board.

Generally speaking, the appellant (pupil/parent/guardian) is responsible for the cost of the transcription. However, if the County Board rules in favor of the appellant, the school district shall reimburse the appellant for the costs of the transcription. Also note, if the appellant cannot afford the cost of the transcription due to "limited income" or "exceptional necessary expenses," the transcripts shall be provided to the appellant at no expense to the appellant. (Education Code section 48921.)

What Happens Next? Once the appellant has filed a notice of appeal with the County Board, a hearing date will be set. The hearing must be conducted within 20 school days after a notice of appeal is filed with the County Board. Both the appellant and the local school district shall receive notices not later than 10 calendar days prior to the appeals hearing advising them of (1) the date, time and place of the hearing, (2) the intent of the County Board to hold a hearing in closed session and (3) the opportunity of the pupil to request that the hearing be held in public session.

Notwithstanding the open meeting provisions of California law, the County Board shall hear an appeal of an expulsion order in closed session unless the appellant files a written request, at least 5 calendar days prior to the commencement of the appeals hearing, that the hearing be conducted at a public meeting.

During this period prior to the hearing, the County Board will also request that the local school district/board separately provide:

1. A copy of the entire record including any transcripts and supporting documentation/evidence.
2. Copies of the school district's disciplinary policies, rules and regulations.

All of this information is sent to the County Board of Education members for review prior to the scheduled hearing of the appeal from expulsion.

Scope and Limitations of the Hearing: The County Board is required to base its decision upon the written record/transcript conducted during the expulsion proceeding at the local school district level. Only under special circumstances, discussed in item 4. below, may a County Board actually consider new evidence. The County Board's charge is to determine if the pupil's legal rights were violated. It is not the charge of the County Board to agree or disagree with the local school board's decision to expel, but to assure that those legal procedures were followed and that a fair hearing was conducted. If this is kept in mind, better preparation for the appeals hearing will be made by focusing on the four questions listed below:

1. Did the local school board proceed without or in excess of its jurisdiction by expelling the pupil?

Explanation: As used in this context, 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 sections 48900-48918.6, a situation where an expulsion order is not based upon the acts enumerated in Education Code section 48900-48900.7, or a situation involving acts not related to school activity or attendance.

2. Was the pupil afforded a fair hearing before the local school board and/or the administrative panel?

Explanation: The essential forms of "due process" must be provided to the pupil as part of the disciplinary process. This would include, without limitation, such things as timely notification of the charges, an opportunity to respond to the charges, an opportunity to call witnesses, present evidence, and cross-examine adverse witnesses.

3. Was there prejudicial abuse of discretion during the expulsion process?

Explanation: An abuse of discretion is established if, for example, school officials have not met the procedural requirements of Education Code sections 48900-48918.6, the decision of the local school board is not supported by required "findings," or the findings are not supported by the evidence introduced at the expulsion hearing before either the administrative panel or the local school board, as the case may be.

4. Is there 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 administrative panel and/or local school board?

Explanation: Sometimes evidence is not known or available at the time of a hearing which reasonably could have altered the local school board's decision.

When it is determined that this information could not have been reasonably produced and is deemed significant, or was improperly excluded, the County Board has two options: (1) the case may be (and generally is) sent back to the local school board for reconsideration, or (2) the County Board may conduct its own "hearing de novo" (a new hearing) pursuant to the provisions of Education Code section 48923.

What Will Happen at the Hearing? When the agenda item is called, the County Board will convene to closed session unless the appellant has requested an open hearing on the matter. The only persons who shall remain in the hearing room are the appellant and his/her representatives, district representatives, the County Board, the County Superintendent (Secretary to the County Board), legal counsel to the County Board and any members of the Superintendent's staff needed to conduct the hearing. If an open meeting was timely requested by appellant, the public may also attend the hearing. The hearing shall be conducted as follows:

1. The pupil, parent or guardian or counsel for the pupil will be asked to present his/her case to the County Board. **Reminder:** The County Board must accept the facts and evidence presented at the local school district level. This is not a rehearing of the original expulsion case. In effect, the County Board must determine if the local school board violated the legal rights of the pupil in reaching its expulsion decision. Please see the section on "Scope and Limitations of the Hearing" for the discussion of the types of issues the County Board can hear/consider.
2. The representative(s) of the school district will be asked to present its case to the County Board.
3. County Board members will then have the opportunity to ask questions of both the appellant and the school district.
4. When the presentations/arguments and questioning have been completed, the County Board shall retire to closed session to deliberate and decide the case. If, during its deliberation, the County Board has any additional questions or seeks input from either party, all parties have the right to be present during the inquiry.
5. Following its deliberation, the County Board shall convene in open session. The County Board must make its decision within 3 school days. However, in most cases, the decision is made the same day. The County Board shall do one of the following:

- a. Remand the matter to the local school board and may, in its discretion, order the pupil reinstated pending reconsideration if it determines 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 local school board and/or administrative panel, or conduct its own "hearing de novo" (new hearing) upon reasonable notice to the appellant and the district for the purpose of considering the new evidence and rendering its own decision.
- b. Remand the matter to the local school board if the County Board determines that the decision of the local school board is not supported by the findings required by law but evidence supporting the required findings exists in the record of the proceedings.
- c. Uphold the local school board's decision.
- d. Reverse the local school board's decision.

In any case in which the County Board enters a decision reversing the local school board, the County Board may direct the local 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.

The County Board's decision is final. We recommend a thorough review of California Education Code sections 48900-48925 for a detailed description of the expulsion and appeal processes.

How to Prepare for the Hearing: The appellant's presentation must focus on the four major issues listed in the "Scope and Limitations of the Hearing." In order to do so, it may be helpful to prepare a written statement in advance of the hearing focusing primarily on the extent to which the school district violated the legal rights of the pupil or otherwise committed a legal mistake/error in making its expulsion decision.

Some issues that may give rise to reversing the decision of the local school board include:

- Was the expulsion based on those acts listed in Article 1 commencing with Education Code section 48900? (See "Actions for Which Students May Be Suspended or Expelled")
- Was the expulsion order based on act(s) related to school activity or attendance as provided in Education Code section 48900?

How to Prepare for the Hearing (con't):

- Did the pupil or parent/guardian receive proper notice concerning hearings and did the hearings occur within the timelines specified by law?
- Did the school district present “substantial evidence” to show that the pupil engaged in some form of prohibited misconduct?
- Did the administrative panel and/or the local school board make the necessary findings?
- Was there a complete record of the expulsion hearing including the transcripts?
- Was an opportunity provided to hear and/or examine all evidence introduced against the pupil?
- Was an opportunity provided to present evidence on the pupil’s behalf?

Right to Have Attorney or Advocate Present: It is the right of all concerned parties to be represented by an attorney or non-attorney advocate/adviser.

What are the Parental Options/Responsibilities under the Compulsory Education Law if Expulsion is Upheld?

1. Each pupil between the ages of 6 and 18 years, not exempted under the provisions of California law, is subject to compulsory full-time education. (Education Code section 48200.)
2. Contact the local school district and obtain a copy of its procedures to review and readmit an expelled pupil at a future date.
3. Check with the local school district to determine referral to a community day school during the period of the expulsion.
4. If the pupil moves to or otherwise seeks enrollment in another school district, California law requires that the “new” school district be notified of the expulsion or any pending expulsion.
5. A pupil may apply for admission to a private school.

Summary of Time Requirements In Expulsion Proceedings

STEP	TIME REQUIREMENTS
Determination of Misconduct	Informal due process hearing with pupil. [Ed Code 48911(b)]
Suspension	Maximum of 5 school days for each offense. [Ed Code 48911]
Recommendation for expulsion/extension of suspension	Within the 5 school days of initial Suspension, district must conduct an <u>extension of suspension meeting</u> with parents. [Ed Code 48911(g)]
Notice of hearing	Written notice provided at least 10 calendar days prior to hearing date. [Ed Code 48918 (b)]
Pupil request for open hearing	Written request must be filed at least 5 calendar days before date of hearing. [Ed Code 48918 (c)]
Pupil postponement of hearing	Pupil entitled to at least one postponement of not more than 30 calendar days. [Ed Code 48918 (a)]
Expulsion hearing	Must be conducted within 30 schooldays following determination that pupil has committed an expellable offense. [Ed Code 48918 (a)]
District use of administrative panel	Within 3 schooldays after hearing the case, the administrative panel shall submit an expulsion recommendation to the local school board. [Ed Code 48918 (e)]
Decision of local school board	Within 10 school days after the conclusion of the hearing or within 40 school days (from the date of removal from school) if the hearing is conducted by an administrative panel. [Ed Code 48918 (a)]
Appeal to the County Board	Within 30 calendar days following the decision of local school board to expel. [Ed Code 48919]
Appellate hearing	Within 20 school days following the filing of a written notice of appeal. [Ed Code 48919]
Decision of the County Board	Within 3 school days of the appeals hearing. [Ed Code 48919]

Actions for which pupils may be suspended or expelled:

1. Caused, attempted to cause, or threatened to cause physical injury to another person.
2. Willfully used force or violence upon the person of another, except in self-defense.
3. Possessed, sold or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.
4. Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of the Health & Safety Code, an alcoholic beverage, or an intoxicant of any kind.
5. Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of the Health & Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage or intoxicant.
6. Committed or attempted to commit robbery or extortion.
7. Caused or attempted to cause damage to school property or private property.
8. Stolen or attempted to steal school property or private property.
9. Possessed or used tobacco, or products containing tobacco or nicotine products, including but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.
10. Committed an obscene act or engage in habitual profanity or vulgarity.
11. Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health & Safety Code.
12. Disrupted school activities or otherwise defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.
13. Knowingly received stolen school property or private property.

Actions for which pupils may be suspended or expelled (con't):

- 14. Possessed an imitation firearm. As used in this section, "imitation firearm" means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.
- 15. Committed or attempted to commit a sexual assault as defined in sections 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in section 243.4 of the Penal Code.
- 16. Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for the purpose of either preventing that pupil from being a witness or retaliating against a pupil for being a witness, or both.
- 17. Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription Soma.
- 18. Engaged in, or attempted to engage in, hazing as defined in Education Code section 48900(q).
Hazing does not include athletic events or school sanctioned events.
- 19. Engaged in an act of bullying, including but not limited to, bullying committed by means of an electronic act, as defined in subdivisions (f) and (g) of Education Code section 32261, directed specifically toward a pupil or school personnel.
- 20. A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension but not expulsion; except that a pupil who has been adjudged by a juvenile court to have committed, as an aider or abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to possible expulsion.
- 21. A pupil may be suspended from school or recommended for expulsion if the superintendent or principal of the school in which the pupil is enrolled determines that the pupil has committed sexual harassment as defined in Education Code section 212.5. (Ed Code section 48900.2)

Actions for which pupils may be suspended or expelled (con't):

- 22. A pupil in grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of hate violence as defined in Education Code section 233 (e). (Ed Code section 48900.3)
- 23. A pupil in grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against school district personnel or pupils, that is sufficiently severe or pervasive to have the actual or reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the right of either school personnel or pupils by creating an intimidating or hostile school environment. (Ed Code section 48900.4)
- 24. A pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school determines that the pupil has made terroristic threats against school officials or school property or both as defined in Education Code section 48900.7.

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This Handbook was prepared for and adopted by the

KINGS COUNTY BOARD OF EDUCATION

**Board Member Trustee Area Term Exp-
pires**

Mickey Thayer	Area One	2012
Joe Hammond	Area Two	2012
John Boogaard	Area Three	2014
William Gundacker	Area Four	2014
Jim Kilner	Area Five	2012

Tim Bowers, Superintendent
Ex-Officio Secretary

My notes:
