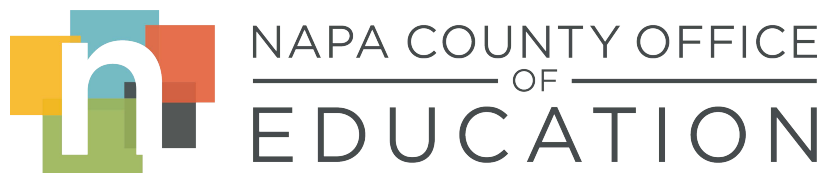


Napa County Office of Education

Expulsion Appeal Handbook for Parents



Barbara Nemko, Ph.D., Superintendent

When may I request an Expulsion Appeal Hearing with the Napa County Board of Education?

Please remember when hearing appeals on expulsion, the County Board of Education is limited to addressing procedural issues only. An appeal before the Board of Education is not a rehearing of the case, but rather a procedural review to determine if the *process* leading to the expulsion was conducted properly and fairly.

You may request an appeal hearing within thirty (30) calendar days after the district's Governing Board voted to expel your child. Even if the enforcement of the expulsion action is suspended and your child is placed on probation, you still must file the appeal within 30 days following the decision.

Parents/guardians may file an appeal when it seems that a procedural condition as described under "What will the Board consider?" has been violated. You are encouraged to carefully review that section of this handbook and to contact the Napa County Office of Education to review and discuss.

If you have additional questions, please contact:

Office of the Superintendent
(707) 253-6810

How do I request a hearing?

If, after speaking with staff at the County Office of Education, you believe an appeal is warranted, you would request an Expulsion Appeal Request form from the Napa County Office of Education. You can obtain this packet in one of two ways:

By phone: (707) 253-6810

In person: Napa County Office of Education - Superintendent's Office
2121 Imola Ave. Napa, CA

The appeal form must be completed, signed and returned within **thirty (30) calendar days** after your child has been expelled. Complete all sections of the form legibly. It is important that you read the section entitled, “When may I request an Expulsion appeal hearing with the Napa County Board of Education?” before completing the form, as the Board will only consider procedural issues.

The completed appeal form must be returned to the Napa County Office of Education with an official transcript of the expulsion hearing and supporting documents from your child’s school district. If the transcript is not available at the time of submission, the appeal form may be returned with written documentation (a letter of request or a proof of service) demonstrating that you have requested a transcribed copy of the completed record of the expulsion hearing conducted by the school district. You will be responsible for the cost of the transcription unless:

- You cannot afford the costs due to “limited income” or “exceptional necessary expenses.” In this case, the transcripts will be provided at no cost by the school district (E.C. 48921).
- If the district Governing Board’s decision is reversed, the district is required to reimburse you the costs of the transcription.

Your child’s school district must provide you with the transcriptions, supporting documents, and records within **five (5) school days** following the written request. Please see the Napa COE AR 5144.3 for the list of required supporting documents.

Once you have received these records, you must immediately file suitable copies of these records with the County Board of Education, through the Napa County Office of Education. All materials need to be delivered (by mail, email or in person) at least ten (10) calendar days before the date set for the County Board hearing. If you do not submit the paperwork within this time frame, you will need to bring the documents to the hearing, and the Board will decide if they will accept them at that time.

What happens next?

Once the Napa County Office of Education has received a completed request for an appeal from expulsion, a hearing date will be set. The hearing must be within **twenty (20) school days** after the Napa County Office of Education receives your appeal request. You, as well as your child's school district, will receive a notice by mail **ten (10) calendar days** prior to the hearing regarding the exact date, time, and location of the hearing.

The notice of the hearing will contain a statement that the County Board of Education intends to hold the hearing in closed session. California Education Code requires the hearing be closed unless the parent/guardian requests the hearing to be open or public. If you desire an open hearing, you must make the request **in writing five calendar (5) days** prior to the hearing date. The County Board of Education is required to honor your request.

What will the Board consider?

The County Board of Education is required to base its appeal consideration upon the written record of the hearing conducted in your child's district. Only under special circumstances, which are discussed in item 4 (see below), may a County Board of Education actually consider new evidence.

The role of the County Board is to determine if your child's due process rights were violated, which in turn resulted in your child receiving an unfair hearing. The County Board does **not** agree or disagree with the local board's decision to expel, but **does review the case to ensure that legal procedures were followed and a fair hearing was conducted.**

To best prepare a case, parents/guardians should focus on the four questions that follow. When submitting an appeal to the County Board, one of more of these areas **must** be identified as the basis for appeal.

1. **Did the district's Governing Board proceed without or in excess of its jurisdiction in expelling your child?**
 - a. The expulsion hearing did not occur within **thirty (30) school days** after the date the principal or the superintendent recommended your child be expelled and you did not request a postponement of the expulsion hearing.
 - b. The expulsion was based on acts other than those enumerated in the Education Code. To learn the reasons for which a student may be expelled, see California Education Code Section 48900.
 - c. The expulsion was based on acts not related to a school activity or attendance.

What will the Board consider? – *continued*

2. Was your child afforded a fair hearing before the district's Governing Board?

The district is required to provide due process and a timely notice of the hearing to allow time to hear and examine all evidence submitted; and a reasonable opportunity to present evidence to deny, explain, or mitigate the allegations.

3. Was there a prejudicial abuse of discretion by the district's Governing Board?

An abuse of discretion could include any of the following:

- The procedural requirements of the Education Code were not met.
- The decision to expel your child is not supported by the findings prescribed in Education Code Section 48915.
- The findings are not supported by evidence.

The County Board 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 of discretion was prejudicial to the student.

4. Is there now 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 district's Governing Board?

Sometimes evidence is not known or available at the time of a hearing which reasonably could have altered the Governing Board's decision. When it is determined that this information could not have been reasonably produced at the time of the hearing, and the information is deemed significant, -OR- when the information was improperly excluded, the County Board of Education has two options:

- The case may be (and is generally) sent back to the district's Governing Board for reconsideration.
- If deemed necessary, the County Board may grant and conduct a new hearing (hearing de novo).

What will happen at the hearing?

Hearings are typically conducted in closed session (unless there has been a request for an open hearing) during regular or special Napa County Board of Education meetings held at the:

Napa County Office of Education
2121 Imola Avenue
Napa, CA 94559

It is the intent of the Board to conduct the hearing in a way that encourages open communication and understanding of the system. The hearing will be conducted in such a manner that no special legal expertise is necessary. The law does permit the parent to bring legal counsel or an advocate if deemed necessary (at the parents' own expense), although formal hearing procedures are not in effect.

A parent/guardian may request a translator at the time the appeal is filed if one believes that a translation would aid in understanding of the proceedings, and would support the case being more clearly communicated to the Board.

When an appeal comes up on the agenda, the Board of Education meeting will be closed (unless an open hearing has been requested), and anyone not involved in the matter will be excused from the Board Room. You and your representatives (if applicable) and the representatives of the school district will be asked to take seats at a table in front of the Board.

During the hearing:

1. If any new materials are submitted that the Board has not already received, the Board members will review them.
2. The parent/guardian, child, advocate representative, or counsel will be asked to make a statement.
3. The representative(s) of the school district that expelled your child will be asked to make a statement.
4. Members of the Board may then ask questions to further clarify any issues.
5. When the questioning is complete, all those present are excused by the Board President. The Board will then discuss the appeal in a closed setting. The Board will discuss the four questions listed in **"What will the Board consider?"** If, during the deliberation, the Board calls back any party associated with the appeal for further questions, all parties will be called back.

What will happen at the hearing? – *continued*

6. Following the deliberation, the Board will convene in open session. The Board has up to **three (3) school days** to make its decision; however, a decision is usually made the same day. The Board President asks for a motion for a resolution in one of the four categories. A Board member will make a motion, and it will be seconded and voted upon. The Board will do one of the following:
 - Remand, or send back, the matter to the local district for reconsideration of new information, which could not have been reasonably produced during the original hearing, or was improperly excluded. The Board may order the student reinstated.
 - The County Board may conduct its own “hearing de novo” (new hearing) considering new and original information and render its own decision. If the County Board decides to conduct a “hearing de novo,” it shall notify the parent/guardian and the district of the time, date, and place for such a hearing and your procedural rights.
 - Uphold the local district’s Governing Board’s decision to expel your child.
 - Reverse the local district’s Governing Board’s decision to expel your child.

The County Board of Education’s decision is **final**. There is no further appeal process. We recommend a thorough review of the California Education Code Sections 48919 and 48925 for a more legally detailed description of the hearing.

How do I prepare for the hearing?

If you decide to be the one to speak during the hearing, it is useful to prepare a statement in advance. The hearing is conducted in a sufficiently informal manner so that no special expertise is necessary. The statement should convey the facts of the case from your perspective and should focus on the four questions listed in **“What will the Board consider?”**

Remember no matter how compelling the appeal, the Board can only reverse a decision if it addresses one of these four areas. The Board will focus on the district’s expulsion hearing, so the case should be built on that record. Any evidence which could not have been reasonably known or was unfairly excluded during the district’s expulsion hearing will be heard by and considered by the County Board of Education. In preparing a statement, a review of the policies and procedures of the governing district is advisable to determine if any procedures or timelines were not adequately met.

If the following questions cannot be answered satisfactorily, there may be cause for an appeal.

Were you and your child informed of district policies regarding discipline, particularly as they related to violation which might result in an expulsion? (E.C. Section 35291.5)

Were you or your child invited to appear for all expulsion proceedings?

Were you or your child allowed to have an attorney or a non-attorney advocate present during the hearing?

Were all the proceedings held in closed session (unless an open session was requested) and was confidentiality respected?

Was there substantial evidence of commission of the offense?

Was there a complete record of the expulsion hearing?

If the district’s Governing Board conducted the factual hearing by using a hearing officer or administrative panel rather than a direct hearing before the board, was a copy of the written report and an opportunity to comment before the board provided to the parents and student?

Were you or your child informed of his/her right to appeal before the County Board of Education and of your right to request readmission?

Was an opportunity provided to hear and/or examine all evidence submitted against your child?

Is there now relevant and material evidence, which with reasonable diligence, could not have been revealed or was improperly excluded during the hearing before the school districts’ Governing Board?

Is the decision of the Governing Board supported by the findings required in 48915 recorded on the record?

Your Options/Responsibilities

What are your options/responsibilities under the Compulsory Education Law if the expulsion is upheld by the County Board of Education?

- If you intend to remain in the school district from which your child was expelled, contact the district in writing for a copy of its procedures to review and readmit expelled pupils.
- If you and your child move to another district, you are required by law to notify the new district of the expulsion or pending expulsion (E.C. 48915.1 and 48918).
- The local Governing Board may place the student in a community day school within the district if it has one.
- Your child may apply to another district and must inform its staff of the expulsion order or any pending expulsion. (The new district does not have to accept expelled students.)
- A student expelled under **48915 subdivision (a) or (c)** may not attend a school unless it is a county community school, a juvenile court school, or a community day school during the period of expulsion. The student **must** be in one of these schools for the period of expulsion.
- Your child may apply for admission to a private school.
- A credentialed teacher may be employed to instruct the student in the appropriate grade level (home tutoring).
- A request may be made for placement in a county community school pursuant to approval by the district's School Attendance Review Board (SARB).
- At the time an expulsion of a student is ordered, the Governing Board of the school district shall ensure that an education program is provided to the student who is subject to the expulsion order for the period of the expulsion (E.C. 48916.1)
- When a child age 6 to 18 years is expelled from a school district, parent or guardian is **still** responsible to ensure that the student attends school (E.C. 48200).
- During the expulsion, the student **must** complete the district Board of Education's rehabilitation plan and demonstrate that he or she is **not** a continuing danger to the other students, staff or self.