

San Luis Obispo County Board of Education
STUDENT EXPULSION APPEAL PROCESS
Administrative Regulation #5144.3 – Adopted 11/4/2021

INTRODUCTION

One of the duties and responsibilities of the San Luis Obispo County Board of Education is to hear expulsion appeals from school districts under its jurisdiction. These include: Atascadero Unified, Cayucos Elementary, Coast Unified, Lucia Mar Unified, Paso Robles Joint Unified, Pleasant Valley Joint Union Elementary, San Luis Coastal Unified, San Miguel Joint Union Elementary, Shandon Joint Unified and Templeton Unified.

In hearing appeals, the County Board is committed to fairness and consistency in its decisions. To achieve this goal, the County Board wishes to ensure that students, parents/guardians know how to appropriately exercise their right to appeal.

This document is intended to provide the information necessary to assist in appealing an expulsion order of a school district board of education (hereafter referred to as, “local board”). The student or the student’s parent/guardian filing an appeal (hereafter referred to as, “appellant”) should review the complete record of the hearing which includes a transcript of the proceedings along with supporting documents and may want to consult with a parent/child advocate or attorney.

While this information explains the appeal process, it is not a substitute for important original sources such as the California Education Code (E.C. §48900-48926) and the local school district’s policies and procedures pertaining to the suspension and expulsion process.

WHEN MAY AN APPEAL BE FILED WITH THE SAN LUIS OBISPO COUNTY BOARD OF EDUCATION?

1. The student or the student’s parent/guardian has the right to file an appeal of expulsion to the San Luis Obispo County Board of Education within thirty (30) calendar days after the local board’s decision to expel the student. If thirty (30) days have passed since the date of the local board’s decision to expel, the San Luis Obispo County Board of Education does not have jurisdiction to hear the appeal.

On some occasions, a district may suspend the enforcement of an expulsion allowing a student to return to school under certain conditions. However, the thirty (30) day time limitation applies, even though the student may be attending a district school.

Day 1 of the thirty (30) days starts the day after the date of the local board’s decision to expel. If the 30th day falls on a Saturday, Sunday, or holiday, the appeal may be filed the next business day. Filing requires receipt by the San Luis Obispo County Superintendent of Schools.

2. An appeal may be filed when the student or student’s parent/guardian feels that one or more of the conditions as described under “Scope and Limitations of a Hearing” have been violated. It is helpful if the parties making an appeal understand that an appeal before the San Luis Obispo County Board of Education is not a rehearing, but rather a review of the record of local proceedings to determine that all due process procedures were followed and that a fair hearing was conducted. Individuals are encouraged to carefully review “Scope and Limitations of the Hearing” and to contact the San Luis Obispo County Superintendent of Schools with any questions (805-543-7732).

HOW IS AN APPEAL REQUEST MADE?

The student or the student's parent/guardian may file an appeal by submitting the *Request for Appeal of Expulsion Hearing* form to the San Luis Obispo County Superintendent of Schools in person or by mail to:

San Luis Obispo County Board of Education
Attn: San Luis Obispo County Superintendent of Schools
3350 Education Drive
San Luis Obispo, CA 93405

The form requesting an appeal must contain the following information:

1. Name, address and telephone number of parent or guardian of the student and the name, address and telephone number of the person, if any, representing the student.
2. Name, age, date of birth, and grade level of student.
3. School district of residence and school most recently attended by the student.
4. The date the local board voted to expel the student. (Attach a copy of the notice of the expulsion order).
5. A statement of the basis for the appeal that relates to one or more of the conditions as described in "Scope and Limitations of the Hearing" (beginning on page 3).

EXPULSION DOCUMENTS FROM THE SCHOOL DISTRICT

On the same day the request for an appeal is made with the County Board, the student or the student's parent/guardian must submit a written request for a copy of the written transcripts and supporting documents from the local school district.

Within ten (10) school days of receipt of a written request for records, the local district must provide a transcribed copy of the complete record of the hearing, which must be certified/signed by the local district's superintendent or designee, to the appellant. Typically, the local district will have a taped record of the hearing that must be transcribed to a written record for an appeal. The appellant will be responsible for the cost of the transcription. If the appeal is upheld, the local district is required to reimburse costs. If the appellant cannot reasonably afford the cost of the transcription due to "limited income" or "exceptional necessary expenses," or both, the transcripts will be provided at no cost upon parent/guardian certifying this to the local district. (E.C. §48921). The transcript must be provided immediately to the County Superintendent of Schools after being provided to the appellant. All supporting documents are to be provided no later than ten (10) calendar days prior to the appeal hearing date.

If the expelled student was enrolled in special education (or if the school district had a basis of knowledge that the student had a disability prior to the occurrence of the student's misconduct), the school district must identify substantiation in the hearing record (or provide additional documentation) that the legally required procedures were completed prior to commencing the expulsion hearing (i.e., compliance with Education Code 48915.5 and related federal law (34 Code of Federal Regulations 300.530-300.537)).

WHAT HAPPENS NEXT?

Once the San Luis Obispo County Superintendent of Schools has received the Notice of Appeal Form, a date will be set for the appeal hearing. The hearing must be held within twenty (20) school days after the request for an appeal has been received. Typically, appeal hearings are held in conjunction with the regularly scheduled meetings of the San Luis Obispo County Board of Education. Both the appellant and the local school district will receive notices by mail at least ten (10) calendar days before the hearing regarding the date, time, and place of the hearing.

The notice of the hearing will contain a statement that the San Luis Obispo County Board of Education intends to hold the hearing in closed session (*i.e.*, not open to the general public). The California Education Code requires that the hearing be closed unless there is a request that the hearing be conducted in open (public) session. If an open hearing is desired, it must be requested in writing five (5) calendar days prior to the hearing date (E.C. §48920).

Either the appellant or the school district may request a postponement by submitting a written request, including the reason, to the County Office of Education at least five (5) calendar days prior to the hearing. The request shall be acted upon by the County Superintendent of Schools within two (2) days after determining whether the request is based upon good cause.

During this period prior to the hearing, the San Luis Obispo County Board of Education will also request that the local school district provide:

1. Copies of all documents pertaining to the expulsion.
2. The local school district's policies, rules and procedures dealing with disciplinary due process.

All of this information is forwarded to the San Luis Obispo County Board of Education members for review prior to the appeal hearing.

SCOPE AND LIMITATIONS OF THE HEARING

The San Luis Obispo County Board of Education is required to base its appeal consideration upon the written record of the hearing including documents produced at the hearing, conducted in the student's local school district. Only under special circumstances discussed in item 4 (see below) may a County Board actually consider new evidence.

It is not the charge of the County Board to agree or disagree with the local board's decision to expel, but to assure that due process procedures were followed as prescribed in the Education Code and that a fair hearing was conducted. The appellant must consider the following questions and related explanations in preparing an appeal.

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

Explanation: The California Education Code (§48900 and §48915) specifies the reasons for which a student may be expelled, the required procedural timelines, and that the act or acts must be related to school activity or attendance.

2. Was the student afforded a fair hearing before the local board?

Explanation: The local school district is required to provide timely notice of the hearing; to hear and examine all evidence submitted; and to allow a reasonable opportunity for the student to

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present evidence to deny, explain, or mitigate the allegations.

3. Was there a prejudicial abuse of discretion by the local board?

Explanation: The basic objective of the expulsion process, as defined in the Education Code, is to afford a fair hearing to the student. If the local school district fails to meet certain procedural timelines, expels a student for the wrong reason (E.C. §48900 and §48915), or makes decision not supported by the evidence, this may amount to an abuse of discretion. If the circumstances are such that these errors result in an unfair and unjustified determination by the local district to the detriment of the student, then the decision may be challenged on that basis by the student.

4. Is there relevant and material evidence which, with reasonable diligence, could not have been revealed in the hearing before the local 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 or the representative. Additionally, the local district incorrectly may not have allowed certain documents or witnesses to be presented during the hearing. If such evidence could reasonably have changed the determination of the local board, the case may be remanded (returned) to the local district for a redetermination or heard as a hearing de novo (new hearing) by the local board.

WHAT WILL HAPPEN AT THE HEARING?

Hearings are conducted in **closed** session (unless an **open** hearing has been requested) during regular or special meetings. San Luis Obispo County Board of Education meetings held at the:

**San Luis Obispo County Office of Education
3350 Education Drive
San Luis Obispo, CA 93405**

The appellant and/or the appellant's representatives and the representatives of the local district will be asked to take seats at a table in front of the County Board. The appellant, the local district, and the County Board all have the right to legal counsel. The County Board generally will be represented by a legal counsel for the board. A recording of the hearing can be available for transcription if necessary. If an open meeting is requested, the public, including the media, also have the right to be present.

The hearing will be conducted as follows:

1. The President or Vice-President of the County Board will preside over the meeting. The Ex-Officio Officer and Executive Secretary to the County Board will provide a brief summary of the case. This will be followed by a statement of the County Board's legal counsel as to the general procedures to be followed. The parties will be cautioned that this is an appellant process, and no new evidence can be considered. However, new evidence may be presented to support an argument that such evidence should have been allowed at the hearing or that while it was unknown or unavailable then, a new hearing should be conducted because of its importance to the ultimate determination of the expulsion.

A written brief may be submitted by each of the parties prior to the opening of argument but will not be considered as "evidence".

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2. The student, parent/guardian, or counsel for the student will be allowed to present the initial opening statement. The statement is limited to five (5) minutes. If the student and/or student's parent or guardian requires an interpreter, the time limit is extended to ten (10) minutes.
3. Following the opening statement, the local district will then make an oral response. The response is limited to five (5) minutes. If the student and/or student's parent or guardian requires an interpreter, the time limit is extended to ten (10) minutes.
4. The student or the student's representative will then have an opportunity to make a reply to the local district. The response is limited to two (2) minutes. If the student and/or student's parent or guardian requires an interpreter, the time limit is extended to four (4) minutes.
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 local district's expulsion hearing.
6. Upon completion of the arguments and questioning by the County Board, all County Board Members present will be excused by the County Board's President. The members will thereafter deliberate in closed session and review the arguments of both sides and the evidence presented during the local district's expulsion hearing. The County Board may call back any party for further questions during the course of deliberations. If this occurs, all parties must be present.
7. Following deliberations, the County Board will convene in open session to make its decision.

WHAT DECISIONS CAN THE COUNTY BOARD MAKE?

The County Board has up to three (3) days to finalize one of the following decisions in writing: (E.C. §48922 and §48923)

1. Uphold the decision of the local board.
2. Reverse the decision of the local board, in which case, the County Board may direct the local board to expunge (remove) all records of the expulsion from the records of the student and the district.
3. If 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 local board:
 - a. Remand the matter back to the local board for reconsideration. The County Board may order the student reinstated pending the reconsideration.
 - b. Grant a hearing de novo. If the County Board decides to conduct a hearing, the student and the student's parent or guardian and the local district will be notified of the time, date, and place for such a hearing and their procedural rights.

The decision of the county board of education shall be final and binding upon the student and upon the governing board of the school district. The student and the governing board 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. (E.C. §48924)

The foregoing is an outline of the procedure followed in the appeal process. The student and/or the student's representative should review and be familiar with the education code provisions, the district's rules, and the San Luis Obispo County Board of Education's rules governing expulsion appeals.

RIGHT TO HAVE ATTORNEY OR ADVOCATE PRESENT

It is the intention of the San Luis Obispo County Board of Education to conduct hearings in a manner which does not require attorneys. Hopefully, this document will adequately enable the appellant to understand the appeal hearing process. However, a legal representative or professional advocate may be desired if the procedures are not thoroughly understood or if there is limited English proficiency or difficulty in expression before a group. While attorneys are not required, all parties involved do have a right to have an attorney or professional advocate present. Please provide advance notice to the County Superintendent of Schools if an attorney or professional advocate will be present at the hearing.

The Lawyer Referral & Information Service, a non-profit community service program sponsored by the San Luis Obispo County Bar Association (<https://slobarlis.org>) may be contacted at (805) 541-5502 to determine your eligibility for legal assistance.

PARENTAL OPTIONS/RESPONSIBILITIES UNDER THE COMPULSORY EDUCATION LAW IF EXPULSION IS UPHELD

1. Contact the local district and ask for a copy of its procedures to review and readmit the expelled student once the period of expulsion has ended.
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 (E.C. §48915.1 and §48918).
3. A student may apply for admission to a local charter school.
4. A student may apply for admission to a private school at the cost of the parent or guardian.
5. A credentialed teacher may be employed to instruct the student in the appropriate grade level (home tutoring).
6. A request may be made for placement in Loma Vista Community School. Contact the Director of Alternative Education at 805-543-7732.

For more information or questions, contact:

San Luis Obispo County Office of Education

County Superintendent of Schools

(805) 543-7732



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