



TUOLUMNE COUNTY
SUPERINTENDENT OF SCHOOLS

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TUOLUMNE COUNTY BOARD OF EDUCATION

EXPULSION APPEAL HANDBOOK **A Guide for Parents**

Dear Parents,

One of the duties and responsibilities of the Tuolumne County Board of Education is to hear expulsion appeals from districts under its jurisdiction. In hearing the appeals, the Board is committed to fairness in its deliberations. To achieve fairness, the Board wishes to ensure that Tuolumne County parents know of their right to appeal, and understand the process to do so.

The Tuolumne County Board of Education has developed this brochure to accompany its Board Policy on Expulsion Appeals (available at: <https://www.tcsos.us/about/board/appeals/>) in hopes it provides helpful information and makes the process clear.

The Board seeks to make fair and equitable decisions, based on the application of its procedures with the information presented. Please remember the County Board of Education is limited to addressing procedural issues as basis for an appeal.

The information that follows is not intended to be your only source of information. You are encouraged to review California Education Code, Sections 48900 - 48925, school district policies and procedures for expulsions, and the TCSOS website. We sincerely hope that you find this brochure helpful.

The Tuolumne County Board of Education



When may I request an Expulsion Appeal Hearing with the Tuolumne 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 brochure and to contact the Tuolumne County Superintendent of Schools Office to review and discuss. If you have additional questions, please contact:

Administrative Analyst
209-536-2000
administration@tcsos.us



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 complete and return all required paperwork and documents to the Tuolumne County Superintendent of Schools Office.

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 Tuolumne 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 Tuolumne County Superintendent of Schools Office 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 may use the "Request for Transcript and Supporting Documents from School District" at the end of this handbook. 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 (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 ten (10) school days following the written request.

Once you have received these records, you must immediately file suitable copies of these records with the County Board of Education, through the Tuolumne County Superintendent of Schools Office. 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 Tuolumne County Superintendent of Schools Office has received a completed request for an appeal from expulsion, a hearing date will be set. The hearing must be within thirty (30) school days after the Tuolumne 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 the section in this brochure entitled, "Actions Resulting in Suspension or Expulsion."
- c) The expulsion was based on acts not related to a school activity or attendance.

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. (See "Actions Resulting in Suspension or Expulsion" in this brochure)
- ☐ The findings are not supported by evidence.

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).



Actions Resulting in Suspension or Expulsion

A student may not be suspended from school or recommended for expulsion, unless the superintendent or the principal of the school determines that the student has committed one of the following acts:

- ☐ Caused, attempted to cause, or threatened to cause physical injury to another person (If a student aids in the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion. However, if the student has been deemed by a juvenile court to have committed, as an aider, a crime of physical violence in which the victim suffered great or serious bodily injury, the exception does not apply (i.e. the student may be expelled.)
- ☐ Willfully used force or violence on another person, except in self-defense
- ☐ 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 student has obtained written permission to possess the item from a certificated school employee, which is supported by the principal or the designee of the principal
- ☐ 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 Division 10 of the Health and 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
- ☐ Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant
- ☐ Committed or attempted to commit robbery or extortion
- ☐ Caused or attempted to cause damage to school property or private property
- ☐ Stole or attempted to steal school property (which includes, but is not limited to, electronic files and databases) or private property
- ☐ Possessed or used tobacco, or any 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 student of his/her own prescription products
- ☐ Committed an obscene act or engaged in habitual profanity or vulgarity
- ☐ Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in section 11014.5 of the Health and Safety Code
- ☐ Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties
- ☐ Knowingly received stolen school property or private property



- ☐ Possessed an imitation firearm (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)
- ☐ Committed or attempted to commit a sexual assault as defined in Section 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
- ☐ Committed sexual harassment as defined in Section 212.5 (E.C. 48900.2).
 - a) The conduct described in Section 212.5 must be considered by a reasonable person of the same gender as the victim to be sufficiently severe or pervasive to have a negative impact upon the individual's academic performance –OR– to create an intimidating, hostile, or offensive educational environment. (This section does not apply to students enrolled in kindergarten and grades 1 to 3, inclusive.)
- ☐ Harassed, threatened, or intimidated a student who is a complaining witness or a witness in school disciplinary proceeding for purposes of either preventing that student from being a witness or retaliating against that student for being a witness, or both
- ☐ Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma
- ☐ Engaged in, or attempted to engage in, hazing (a method of initiation or pre-initiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil; it does not include athletic events or school-sanctioned events)
- ☐ Engaged in an act of bullying (any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of electronic act, as defined, including, but not limited to, sexual harassment, hate violence, or harassments, threats, or intimidation, that has the effect or can reasonably be predicted to have the effect of placing a reasonable student in fear of harm to that student's or those students' person or property, causing a reasonable student to experience a substantial detrimental effect on his or her physical or mental health, causing a reasonable student to experience substantial interference with his or her academic performance, or causing a reasonable student to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school)
- ☐ Caused, attempted to cause, threatened to cause, or participated in any act of hate violence as defined in subdivision (e) of Section 233 (E.C. 48900.3)
- ☐ 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 rights of either school personnel or pupils by creating an intimidating or hostile educational environment (E.C. 48900.4) (Applies to students enrolled in any of grades 4 to 12, inclusive)
- ☐ Made terroristic threats against school officials or school property, or both (E.C. 48900.7) (Terroristic threat includes any statement, written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars (\$1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and



specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.)

For a student to be suspended or expelled for any of the previous acts, the act must be related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal –OR– occurring within any other school district.

A student may be suspended or expelled for acts related to school activity or school attendance that occur at any time, including, but not limited to any of the following:

- ☐ While on school grounds
- ☐ While going to or coming from school
- ☐ During the lunch period whether on or off the campus
- ☐ During, or while going to or coming from, a school sponsored activity

A superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion, including, but not limited to, counseling and/or an anger management program.



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 Tuolumne County Board of Education meetings held at the:

Tuolumne County Superintendent of School Office
175 Fairview Lane
Sonora, CA 95370

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 bring a translator (at parents' own expense) 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.
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)
- ☐ Was the expulsion based on acts listed in Education Code Section 48900? (See “Actions Resulting in Suspension or Expulsion” in this brochure)
- ☐ Did you or your child receive proper notice regarding hearings, and did hearings occur within timelines specified in law? (See “Timelines” in this brochure)
- ☐ 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?
- ☐ 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?



Additional Considerations – Special Education and 504 students

Special Education and Section 504 of the Rehabilitation Act issues are not resolved by the County Board of Education. They must be resolved prior to appealing to the County Board of Education as the County Board of Education does not hear matters related to Special Education or Section 504.

The following may be helpful questions to pursue. However, they are not resolved by the County Board.

If your child has exceptional needs and was under an Individualized Education Program (IEP) at the time of the suspension:

- ☐ Was there a pre-expulsion hearing of the Individual Education Program Team prior to the expulsion hearing? (E.C. Section 48915.5-
- ☐ Was an invitation to attend the pre-expulsion hearing extended 48 hours prior to the hearing? (E.C. Section 48915.5-d)
- ☐ Was it determined during the pre-expulsion meeting that the 1) misconduct was not caused by a manifestation of your child's disability? 2) was your child appropriately placed at the time the misconduct occurred? (E.C. Section 48915.5- a (2) (3))
- ☐ Was the suspension, pending the expulsion hearing, for more than ten (10) days without a parent's agreement or order by a court? (E.C. Section 48915.5-d and 48911-a through h)

If your child is Section 504 of the Rehabilitation Act qualified at the time of the suspension review the following:

- ☐ The district must reevaluate your child prior to any suspension of ten (10) days or more.
- ☐ Is there a nexus between your child's disability and the behavior complained of? If yes, the child may not be suspended more than ten (10) days unless the behavior is alcohol or other drug, serious physical injury, or firearm related.
- ☐ If there is not a nexus between the child's disability and the behavior, this must be determined prior to the expulsion hearing and recorded into 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 may apply 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.

Who do I call if I have questions?

Please contact:

Tuolumne County Superintendent of Schools
209-536-2000

administration@tcsos.us

REQUEST FOR TRANSCRIPT AND SUPPORTING DOCUMENTS FROM SCHOOL DISTRICT

DATE:

TO: SUPERINTENDENT:
SCHOOL DISTRICT:

This is to inform you that I am filing an Expulsion Appeal and Request for Hearing with the Tuolumne County Board of Education relative to the district's expulsion of my child, _____. California Education Code Sections 48919 and 48921 require that I request from you a copy of the written transcripts of the expulsion hearing and supporting documents certified by you or the Clerk of the board to be a true and complete copy.

I understand that these documents will be provided within ten (10) school days of this request, provided my request is within 30 days of the district's Governing Board's decision to expel, and I have filed the Expulsion Appeal and Request for Hearing with the Tuolumne County Board of Education.

Your office may provide a copy of these documents to me or send a copy directly to the Tuolumne County Board of Education. I am requesting that:

_____ You inform me when these documents are ready, and I will then arrange for them to be picked up and delivered to the Tuolumne County Board of Education office immediately thereafter.

–OR–

_____ You send a copy of the documents directly to the Tuolumne County Board of Education at administration@tcsos.us.

You may contact me regarding this request at:

(Phone number and/or email)

Sincerely,

(Signature)